

STATE OF MINNESOTA

IN SUPREME COURT

C2-95-1476

MINNESOTA SUPREME COURT

ADVISORY COMMITTEE ON OPEN HEARINGS IN

JUVENILE PROTECTION MATTERS

*Introduction to Final Report
of National Center for State Courts*

August 2001

**MINNESOTA SUPREME COURT
STATE COURT ADMINISTRATION
COURT SERVICES DIVISION**

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I. INTRODUCTION

Acknowledgements

The members of the Minnesota Supreme Court Advisory Committee on Open Hearings in Juvenile Protection Matters thank all who participated in the three-year pilot project and assisted the Committee and the National Center for State Courts in their endeavors. In particular:

- We are truly grateful to those judicial officers, court administrators, county attorneys, social workers, public defenders, guardians ad litem, and media personnel from the twelve pilot project counties who responded to surveys soliciting their comments about the impact of making court records and hearings accessible to the public.
- We express our appreciation to the child protection system stakeholders in the twelve pilot project counties who participated in local focus group meetings conducted by the National Center for State Courts.
- We are especially thankful to the court administration personnel from the twelve pilot project counties who collected and maintained data regarding requests for access to their county's juvenile protection files.
- Finally, we express our gratitude to the judicial officers and courtroom personnel from the twelve pilot project counties who collected and maintained data regarding the number and the nature of the circumstances leading to the partial or complete closing of hearings to the public.

Without the dedication and participation of each of these individuals, the Committee and the National Center for State Courts would have been unable to fulfill the Supreme Court charge to conduct an evaluation of the Open Hearings Pilot Project.

I. INTRODUCTION

B. COMMITTEE MEMBERSHIP

Committee Chair

Hon. Heidi Schellhas, District Court Judge, Hennepin County Juvenile Court

Committee Members

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Hon. Terri Stoneburner,⁴ Minnesota Court of Appeals

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Mark Toogood,⁵ Hennepin County Guardian Ad Litem

Committee Staff

Judith Nord, Staff Attorney, State Court Administrator's Office

¹ Judge Frank resigned from the Committee upon his appointment to the federal bench for the District of Minnesota.

² Ms. Lamb succeeded Deb Kempf as Hennepin County Juvenile Court Administrator and as that agency's representative on the Committee.

³ Judge Sagstuen was originally appointed to the Committee in his capacity as a Hennepin County Public Defender, although he has since been appointed as District Court Judge.

⁴ Judge Stoneburner was originally appointed to the Committee in her capacity as District Court Judge in Brown County, although she has since been elevated to the Minnesota Court of Appeals.

⁵ Although he began his term of service on the Committee as a Hennepin County Guardian Ad Litem, Mr. Toogood is now employed as Children's Services Assistant Manager, Dept. of Human Services.

II. BACKGROUND LEADING TO PILOT PROJECT

A. MINNESOTA SUPREME COURT TASK FORCE ON FOSTER CARE AND ADOPTION

1. Task Force Charge

In October 1995, the Minnesota Supreme Court issued an Order establishing the Task Force on Foster Care and Adoption⁶ [hereinafter "Foster Care Task Force"]. The Court directed the Foster Care Task Force to:

1. Identify court rules, standards, procedures, and policies and state and federal laws designed to achieve safe, timely, and permanent placements for abused and neglected children;
2. Evaluate the performance of the judicial system in delivering the services provided in the identified rules, standards, procedures, policies, and laws;
3. Assess the quality and adequacy of the information available to courts in child welfare cases;
4. Assess the extent to which existing rules, standards, procedures, policies and laws facilitate or impede achievement of permanent and safe placements of children and the extent to which requirements imposed on the courts impose significant administrative burdens on the courts; and
5. Examine the cooperation between the state court system and tribal court systems and compliance with the Indian Child Welfare Act.⁷

The Foster Care Task Force also "took on" the charge of assessing the desirability of opening child protection hearings to the public.⁸

2. Task Force Data Collection Methods and Analysis

In assessing the desirability of opening child protection hearings to the public, the Foster Care Task Force analyzed federal and state statutes, court rules, and case law regarding public access to juvenile court hearings and records.⁹ The Foster Care Task Force also solicited input from child protection system stakeholders through various data collection efforts, including focus groups, public hearings, site visits, file reviews of child protection cases in six counties, statistical analysis of information contained in the State Judicial Information System, and distribution of attitudinal surveys to judicial officers, state and tribal social services agencies, tribal attorneys, county attorneys, and public defenders.¹⁰ Based upon its data collection efforts, the Foster Care Task Force learned that "[t]he vast majority of those surveyed are opposed to opening CHIPS and TPR hearings to the public."¹¹

⁶ Order Establishing Minnesota Task Force on Foster Care and Adoption, File No. C2-95-1476 (Minn. S. Ct. filed Oct. 1995).

⁷ *Id.* at 1; *see also* Minnesota Supreme Court Foster Care and Adoption Task Force *Final Report* 4 (January 1997) [hereinafter "Foster Care Task Force Report"].

⁸ Foster Care Task Force Report, *supra* note 7, at 4.

⁹ *Id.* at 115-20.

¹⁰ *Id.* at 5, 120.

¹¹ *Id.* at 120.

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3. Recommendation of Task Force Majority to Open Hearings to the Public

While the Foster Care Task Force recognized the "controversial" nature of, and opposition to, publicly accessible juvenile protection hearings, in its January 1997 report to the Court a majority of the members recommended that hearings involving child in need of protection or services (CHIPS) matters and termination of parental rights (TPR) matters should be presumed open to the public in the same manner as criminal proceedings are accessible to the public.¹² Specifically, the Foster Care Task Force recommended that "[t]here should be a presumption that hearings in juvenile protection matters will be open absent exceptional circumstances."¹³ It was also recommended that, with the exception of certain information, juvenile protection court files should be accessible to the public.¹⁴

The Task Force majority based its recommendation on several reasons. First, the majority argued that "the juvenile protection system lacks accountability because it is a closed system."¹⁵ The majority opined:

Although the purpose of a closed system is to provide a protective rehabilitative environment for both parents and children by shielding them from public scrutiny and stigmatization, a closed system allows abuses to exist uncorrected and lack of funding for children's services to go unnoticed by the public. In effect, the very confidentiality that was meant to protect children ends up harming them by keeping abuses in the system and the effects of lack of funding a secret.¹⁶

Second, the Task Force majority believed that "because the juvenile protection system is a closed system, child abuse and neglect decisions are not truly based on a set of 'community standards.'"¹⁷ The majority stated:

Arguably, one of the benefits of having a county-based system of funding juvenile protection services and foster care is that each county may make decisions according to its own community standards guided by the Minnesota Department of Human Services guidelines. But where the community is not cognizant of the perils children face or the types of services or lack of services available to those children, the community cannot respond to or comment on the practices or funding of the juvenile protection system.¹⁸

¹² *Id.*

¹³ *Id.* at 123.

¹⁴ *Id.* The Foster Care Task Force recommended that certain information should not be made accessible to the public, including "information which is protected by law from public access," as well as information that "might (1) cause emotional or psychological harm to children due to the intensely personal nature of the information included about either the children or their families; or (2) discourage potential reports of neglect [and abuse] by revealing confidential information about reporters." *Id.* at 123-25.

¹⁵ *Id.* at 120.

¹⁶ *Id.*

¹⁷ *Id.* at 121.

¹⁸ *Id.*

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Third, the Task Force majority believed that "the closed nature of CHIPS and TPR proceedings is largely unnecessary" on the grounds that "[a] number of proceedings already open to the public deal with issues which are at the heart of CHIPS and TPR proceedings."¹⁹ For example, adult criminal proceedings involving malicious punishment of a child or criminal sexual conduct involving a child victim "are open to the public with certain protections for the child victim witness."²⁰ The majority also cited dissolution and custody matters that "often contain the very same allegations which form the bases of CHIIPS petitions."²¹ The majority also stated that "the press is already free to print any information it lawfully obtains from sources outside the juvenile courtroom and juvenile court records, such as by interviewing witnesses."²²

Finally, the Task Force majority cited the favorable experience reported by Michigan, which has for several years authorized public access to juvenile protection hearings and records. The majority noted that in Michigan juvenile protection hearings and termination of parental rights hearings are "presumptively open but may be closed to the public under the standards set forth in *Globe Newspaper*²³ with regard to closure of criminal cases."²⁴ They also noted that in Michigan juvenile court records are also accessible to the public, and those records that must remain inaccessible to the public are placed in a confidential file to which only persons with a "legitimate interest" may be allowed access.²⁵ Several members of the Foster Care Task Force conducted a site visit to Michigan to see first hand the workings of that state's open hearings system. The majority reported that in talking with some of Michigan's system's stakeholders, "[o]ne judge commented that before the hearings were opened, everyone thought the 'sky would fall,' but 'it didn't'."²⁶ During their site visit, "others reported that the public and the press are not usually in attendance at hearings; family members and foster parents are."²⁷ Finally, the majority Task Force members noted that "[a]lthough children's names can be published, the news media in Michigan has been very sensitive and has rarely published children's names."²⁸

4. Majority's Caveats to Recommending Open Hearings

Acknowledging concerns raised by other child protection system stakeholders, including those Task Force members opposed to open hearings, the Foster Care Task Force majority placed several caveats on its recommendation to open juvenile protection hearings and records to the public. First, recognizing that opening hearings to the public "may chill admissions to CHIPS petitions," the Task Force recommended that "'no contest' answers should be allowed so that parents will not have to enter public admissions."²⁹ The Task Force added that allowing "no

¹⁹ *Id.*

²⁰ *Id.* (citing Minn. Stat. §§ 631.045; 595.02, subd. 4; and 609.3471 (1996)).

²¹ *Id.*

²² *Id.*

²³ See *infra* Section IV(A)(2) (summarizing *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982)).

²⁴ Foster Care Task Force Report, *supra* note 7, at 121.

²⁵ *Id.* at 122.

²⁶ *Id.* (citing "Representative Wes Skoglund, Erin Sullivan Sutton, and Heidi S. Schellhas *Site Visit to Wayne County Juvenile Court in Detroit Michigan: Summary of Observations and Information Gathered* (September 6, 1996)).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 122-23.

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contest' answers will have the added benefit of allowing children to be adjudicated CHIPS more quickly and without a trial where the parents are not willing to admit."³⁰

Second, the Task Force majority also "recognized that practitioners will need clear guidance as to what should be placed in the file accessible to the public and what should be placed in the non-public file."³¹ For that reason, the Task Force compiled and recommended a list of accessible documents and a list of inaccessible documents.³²

Finally, the majority recommended that "the media be trained regarding the new openness of the court," including "an emphasis on journalistic ethics."³³

5. Recommendation of Task Force Minority to Maintain Confidentiality

Five members of the Foster Care Task Force who opposed opening juvenile protection proceedings to the public submitted a minority report explaining their concerns.³⁴ The minority stated:

Opening child protection proceedings in Juvenile Court to the public and media is not in the best interests of children. We agree with the majority's goal of improving the system and making it more accountable, however the benefits of opening the hearings and court records to the public do not outweigh the risks of emotional harm and embarrassment to the children who are the subjects of these proceedings. The goal of the child protection system is to rehabilitate and reunite families. The majority of these children will continue to be part of their communities long after the case has closed. Exposing their families' dysfunctions to the public will not serve, and may actually deter, this goal.³⁵

"One of the greatest concerns" to the minority "are the cases where the media will attend the hearings with cameras and reporters."³⁶ They stated:

Although the majority feels that this will reveal and correct faults in the system, it will be the children that will suffer from the media sensationalizing their most personal family secrets. A child who is the victim of incest will now be even more reluctant to report abuse for fear of her family, friends and everyone in her school, church, and neighborhood learning of her most shameful experience, marking her for life.³⁷

³⁰ *Id.* at 123.

³¹ *Id.*

³² *Id.* at 123, 124-25.

³³ *Id.* at 123, 125.

³⁴ *Id.* at Appendix D.

³⁵ *Id.* at D-1.

³⁶ *Id.*

³⁷ *Id.*

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While acknowledging the majority's recommendation to provide training to the media to temper this concern, the minority stated that "the reality is that there are no means to ensure that children's names, pictures or other identifying information are not published and broadcast for all the world to see."³⁸ The minority also stated:

*It is not reasonable to expect the media to fully report all the cases or even to fully report on each case. Without full reporting, an accurate picture of the case and system is unlikely. Therefore families and the system will be judged by the aberrant cases involving well-known individuals or other cases where the media believes the story will appeal to the prurient interests of the public. Opening these hearings will make it easy for special interest groups and disenfranchised family members to use the media to further their purpose at the expense of the children that we are trying to protect.*³⁹

Another concern expressed by the minority was that "open hearings may chill admissions in child protection cases when the press and other non-parties are present."⁴⁰ With respect to the majority's recommendation to allow "no contest" admissions to temper this concern, the minority stated:

This troubling solution flies in the face of the goal of holding the adults accountable. The first step in any successful reunification is for parents to acknowledge and admit the problems [that] led to the initiation of child protection proceedings. Public disclosure will do nothing to increase the likelihood of parents acknowledging their issues and is likely to discourage admissions. We have already learned from therapists that when defendants make similar pleas in what is known in criminal court as *Alford-Goulette* pleas, therapy and treatment is rarely successful because defendants continue to deny any criminal behavior. There is no reason to believe this result would be any different in juvenile court. By giving the parents an option to plead no contest, children will suffer the consequences when their parents fail at therapy by stating that they did nothing wrong because they did not have to admit any wrong doing or negligence in court.⁴¹

A third concern raised by the minority related to potential abuse of the option to close hearings under "exceptional circumstances." With respect to the majority's proposal that hearings be closed except under "exceptional circumstances," the minority stated "this may also be abused to protect prominent members of the community. At best these exceptional circumstances will result in further mistrust of the system."⁴²

³⁸ *Id.*

³⁹ *Id.* at D-2.

⁴⁰ *Id.* at D-1.

⁴¹ *Id.* at D-2.

⁴² *Id.*

II. BACKGROUND LEADING TO PILOT PROJECT

The minority recognized that "there are people who have a legitimate need and right to have information about individual child protection cases."⁴³ They stated, however, that "[i]f the court process is opened only to these people with a genuine interest in the best interest of the child, it is more likely the child's privacy and dignity will be protected."⁴⁴

Finally, the minority stated that "[o]ne of the goals of open hearings is to increase public awareness and generate public response, but there are other more effective and accurate ways of informing the public of the nature and degree of child maltreatment in our communities."⁴⁵ As alternatives to opening hearings to the public, the minority suggested that the other recommendations proposed by the Task Force, specifically including appointing attorneys for each child and appointing a guardian ad litem for each child, are "a far better means with which to keep an eye on the system than through the media whose role is to inform the public, possibly at the expense of the child."⁴⁶

B. LEGISLATURE'S RESPONSE TO TASK FORCE RECOMMENDATIONS

Following is an excerpt from a law review article written by Hon. Heidi Schellhas⁴⁷ describing the Legislature's response to the recommendations of the Foster Care Task Force:

The Task Force issued its recommendations to the supreme court [in January 1997]⁴⁸ and bills were introduced in the House and Senate.⁴⁹ The House Judiciary Committee, chaired by Rep. Wes Skoglund, DFL-Minneapolis, heard testimony

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at D-3.

⁴⁷ Hon. Heidi S. Schellhas, *Open Child Protection Proceedings in Minnesota*, 26 WM. MITCHELL L. REV. 631 (2000) (Judge Schellhas was a member of the Foster Care and Adoption Task Force and Chair of the Open Hearings Advisory Committee).

⁴⁸ In her law review article Judge Schellhas writes:

The timing of the final report of the Task Force, January 1997, is noteworthy, especially for the purpose of dispelling what appears to be a widespread erroneous belief that the impetus to open child protection proceedings resulted from the death of a three-year old girl, Desi Irving. Prior to her death, a child protection proceeding involving Desi had been dismissed. Desi died at the hands of her mother on February 7, 1997. At the time of her death, she was covered with cuts and cigarette burn marks and had a bruised forehead. According to a neighbor who tried to resuscitate Desi, she was so thin, her ribs could be seen. See Jim Adams, *Mother is Held in Slaying of 3-Year-Old Girl*, STAR TRIB. (Minneapolis-St. Paul), Feb. 8, 1997, at B1. The Task Force issued its final report in January 1997, before Desi's death, and without any knowledge of her circumstances. However, it might be true that "Desi's murder [in 1997] and unanswered questions about whether the system had failed her, whether social workers should have known about the failures of a mother who had failed before, became a catalyst for [the open child protection hearings pilot project]." Chris Graves, *A Child's Death Opens Window to Child Protection*, STAR TRIB. (Minneapolis-St. Paul), June 14, 1998, at A1.

Schellhas, *supra* note 47, at n.213.

⁴⁹ See JOURNAL OF THE HOUSE, 80th Legis. Sess. 89 (Minn. 1997) (introducing H.F. 254, 80th Legis. Sess. (Minn.1997)); JOURNAL OF THE SENATE, 80th Legis. Sess. 371 (Minn. 1997) (introducing S.F. 855, 80th Legis. Sess. 329-30 (Minn. 1997)).

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and recommended a pilot project.⁵⁰ Although the House [Judiciary Committee] passed a bill by a substantial majority to include all [judicial] districts in a pilot project, the Senate passed a bill allowing only limited access.⁵¹ Before the . . . bill passed [the full House], the Conference of Chief Judges voted to recommend against a pilot project opening child protection hearings to the public. Ultimately, the legislature did not pass legislation authorizing open child protection hearings on a permanent basis or through a pilot project.⁵²

While the Legislature did not pass a bill authorizing an open hearings pilot project, it did enact legislation specifying juvenile protection records that would be accessible and inaccessible to the public.⁵³

C. CONFERENCE OF CHIEF JUDGES' RESPONSE TO TASK FORCE RECOMMENDATIONS

The Conference of Chief Judges (CCJ) is the policy making body for Minnesota's trial court system. It is comprised of the Chief Judges and Assistant Chief Judges from each of Minnesota's ten judicial districts. In November 1997, at the request of the Minnesota Supreme Court, the CCJ revisited the issue of implementing an open hearings pilot project.⁵⁴ Following significant subcommittee and committee deliberations, on January 16, 1998, the full CCJ ultimately recommended that "the Supreme Court establish rules for a pilot project in certain limited jurisdictions whereby juvenile protection (CHIPS) proceedings would be presumed open."⁵⁵ This recommendation was made subject to the following conditions:

- 1) Hennepin County would be included in the pilot project and other jurisdictions to be included would be representative of urban, rural, metro and out-state, with the advice of the Conference of Chief Judges;
- 2) the pilot project would last three years with an independent evaluation to commence after one year;
- 3) the independent evaluation would focus on whether the pilot project succeeds in greater accountability and public awareness, whether children have been adversely affected by the open CHIPS proceedings or public access to court files, and whether the media have been responsible in reporting CHIPS files in the name of parent, not the children;
- 4) names, contents and public accessibility of files would be dealt with in certain defined ways; and

⁵⁰ See JOURNAL OF THE HOUSE, 80th Legis. Sess. 329-30 (Minn. 1997).

⁵¹ See JOURNAL OF THE HOUSE, 80th Legis. Sess. 3451-52, 3929 (Minn. 1997); JOURNAL OF THE SENATE, 80th Legis. Sess. 1718 (Minn. 1997).

⁵² Schellhas, *supra* note 47, at 659.

⁵³ Minn. Stat. § 260C.171, subd. 2 (1999).

⁵⁴ See *Report and Recommendations*, Subcommittee on Open CHIPS, Conference of Chief Judges (filed December 4, 1997, by Hon. Gary J. Meyer, Chair, Open CHIPS Subcommittee).

⁵⁵ *Id.* at 2.

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- 5) child protection hearings would be presumed open and could be closed or partially closed by a judge only in exceptional circumstances with a request by all parties to close a hearing to be a factor to be used by presiding judges in determining whether exceptional circumstances exist.⁵⁶

⁵⁶ *Id.* at 2-3.

III. OVERVIEW OF PILOT PROJECT

A. INITIATION OF OPEN HEARINGS PILOT PROJECT

1. Supreme Court Order Establishing Pilot Project

Following the Conference of Chief Judges' approval of the Open Hearings Pilot Project concept, on January 22, 1998, the Minnesota Supreme Court filed an "Order Establishing Pilot Project on Open Hearings in Juvenile Protection Matters"⁵⁷ [hereinafter "Pilot Project Order"], set forth as Appendix A to this *Introduction*. Based upon its "inherent power and statutory authority"⁵⁸ to "regulate public access to records and proceedings of the judicial branch,"⁵⁹ the Court authorized the chief judge of each judicial district to designate one or more counties to participate in a pilot project in which hearings in juvenile protection proceedings "shall be presumed open and may be closed or partially closed by the presiding judge only in exceptional circumstances."⁶⁰ The Court specifically directed that "child in need of protection or services proceedings" be accessible to the public, as well as "permanent placement proceedings, termination of parental rights proceedings, and subsequent state ward reviews."⁶¹ The court directed that the project begin June 1, 1998, and continue for three years.⁶² The pilot project was later extended through December 31, 2001, to allow time for a public hearing regarding the evaluation of the pilot project (see section "C" below) without disruption of the pilot project.⁶³

2. Counties Participating in Pilot Project

Twelve counties were designated by their respective Chief Judges to participate in the pilot project: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis – Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).⁶⁴

B. ACCESS TO RECORDS RELATING TO OPEN HEARINGS PILOT PROJECT

In January 1998, the Court established an Open Hearings Advisory Committee⁶⁵ to "consider and recommend rules regarding public access to records relating to open juvenile protection

⁵⁷ Order Establishing Pilot Project on Open Hearings in Juvenile Protection Matters, File No. C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998) [hereinafter "Pilot Project Order"].

⁵⁸ *Id.* at 1.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 2.

⁶³ Order Extending Pilot Project on Open Hearings in Juvenile Protection Matters, File No. C2-95-1476 (Minn. S. Ct. filed June 19, 2001).

⁶⁴ *Request for Revised Proposals: Evaluation of Open Hearings in Juvenile Protection Matters*, State Ct. Admin. Office, Minn. Sup. Ct. 6 (Dec. 12, 1998).

⁶⁵ Pilot Project Order, *supra* note 57, at 2. The initial list of Committee members is identified in the Pilot Project Order set forth as Appendix A to this *Introduction*. The Court later amended its order to include additional Committee members so that each of the twelve pilot project counties was represented. See "Amended Order

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hearings" and directed the Committee to submit its recommendations by April 15, 1998.⁶⁶ After significant deliberation, the Committee submitted its recommendations to the Court. In May 1998, the Court issued an Order⁶⁷ promulgating a "Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings" [hereinafter "Public Access Rule"]. The Order and Public Access Rule are set forth as Appendix B to this *Introduction*.

The Rule is divided into nine subdivisions, each of which includes an explanatory comment by the Committee:

- Subdivision 1 of the Public Access Rule establishes a presumption of public access to juvenile protection records and provides that "[e]xcept as otherwise provided in this Rule, all case records relating to the pilot project on open juvenile protection proceedings are presumed to be accessible to any member of the public for inspection, copying, or release."⁶⁸
- Subdivision 2 of the Public Access Rule provides that the Rule relates only to records filed on or after June 22, 1998, and that records filed prior to that date are not accessible to the public.⁶⁹
- Subdivision 3 provides that except as otherwise inconsistent, the Rules of Public Access to Records of the Judicial Branch apply to records relating to open juvenile protection proceedings.⁷⁰
- Subdivision 4 identifies records that are not accessible to the public.⁷¹
- Subdivision 5 provides that case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order.⁷²
- Subdivision 6 provides that "there shall be no direct public access to juvenile court case records maintained in electronic format in court information systems."⁷³
- Subdivision 7 authorizes the court to "issue an order prohibiting public access to juvenile court case records that are otherwise accessible to the public when the court finds that there are exceptional circumstances supporting issuance of the order."⁷⁴
- Subdivision 8 provides that all juvenile protection files opened in the pilot project counties on and after June 22, 1998, "shall be captioned in the name of the parent(s) or the child's legal custodian or legal guardian,"⁷⁵ rather than in the name of the child as is the current practice.
- Subdivision 9 provides that the Rule supercedes Minnesota statutes as they apply to public access to records.⁷⁶

Establishing Pilot Project on Open Hearings in Juvenile Protection Matters, File No. C2-95-1476 (Minn. S. Ct. filed Feb. 6, 1998).

⁶⁶ Pilot Project Order, *supra* note 57, at 2.

⁶⁷ Order promulgating Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings, File No. C2-95-1476 (Minn. S. Ct. filed May 29, 1998) [attached as Appendix B to this *Introduction*].

⁶⁸ Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings, subd. 1 (1998) [hereinafter "Public Access Rule"] [attached as Appendix B to this *Introduction*].

⁶⁹ *Id.* at subd. 2.

⁷⁰ *Id.* at subd. 3.

⁷¹ *Id.* at subd. 4.

⁷² *Id.* at subd. 5.

⁷³ *Id.* at subd. 6.

⁷⁴ *Id.* at subd. 7.

⁷⁵ *Id.* at subd. 8.

⁷⁶ *Id.* at subd. 9 (referencing Minn. Stat. § 260C.171, subd. 2, discussed *supra* at the text accompanying note 53).

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C. Evaluation of Open Hearings Pilot Project

The Court's Pilot Project Order directed the State Court Administrator, in consultation with the Conference of Chief Judges, to "contract with an independent research organization to conduct an evaluation of the pilot project."⁷⁷ In Summer 1998, the Court asked the Open Hearings Advisory Committee to assist in selecting the independent evaluator and to serve as consultant to the chosen evaluator.⁷⁸ In February 1999, the National Center for State Courts (NCSC) was chosen to conduct the evaluation.⁷⁹

Although jurisdictions in 16 other states⁸⁰ have adopted statutes or court rules that require or permit public access to juvenile protection hearings, the NCSC evaluation is the first of its kind to be conducted in the nation.

The NCSC gathered data during the period from April 1999 through May 2001. Details regarding the various data collection methods employed by the NCSC, as well as the NCSC's key findings regarding the impact of open hearings, are set forth in Volumes 1 – 3 of the NCSC's Final Report which accompanies this *Introduction*.

⁷⁷ Pilot Project Order, *supra* note 57, at 2.

⁷⁸ Schellhas, *supra* note 47, at 661.

⁷⁹ See Order Authorizing Access to Records and Proceedings of Open Hearings Pilot Project, File No. C2-95-1476 (Minn. S. Ct., filed Jul 6, 1999) (stating that the State Court Administrator has contracted with the National Center for State Courts to evaluate the pilot project).

⁸⁰ Arizona, Arkansas, Colorado, Florida, Indiana, Iowa, Kansas, Maryland, Michigan, Nebraska, New York, North Carolina, Ohio, Oregon, Texas and Washington. See James Walsh, *Open Juvenile Court Raises Concern*, STAR TRIB. (Minneapolis-St. Paul), June 21, 1998, at B1.

IV. CASE LAW REGARDING OPEN AND PUBLIC TRIALS

SECTION IV OF THIS INTRODUCTION IS EXCERPTED IN ITS ENTIRETY FROM A LAW REVIEW ARTICLE⁸¹ WRITTEN BY HON. HEIDI SCHELLHAS, CHAIR OF THE OPEN HEARINGS ADVISORY COMMITTEE. THE PURPOSE OF THIS SECTION IS TO PROVIDE A SUMMARY OF U.S. SUPREME COURT AND MINNESOTA CASE LAW REGARDING OPEN AND PUBLIC TRIALS.

The First Amendment to the U.S. Constitution guarantees public access to most court proceedings under its free speech and press clauses.⁸²

A court proceeding is presumed open if it traditionally has been public and if public access would benefit its operation.⁸³ In applying this test, most courts have denied the public the right of access to court proceedings involving child protection matters.⁸⁴ States are obliged to reunify parents and children, but when reunification fails, states have the power to terminate parental rights.⁸⁵ The U.S. Supreme Court has stated "[f]ew forms of state action are both so severe and so irreversible,"⁸⁶ yet the public and media are generally excluded from the court proceedings in which these "severe and irreversible" actions occur.⁸⁷ Some legal scholars argue that laws that mandate closing dependency court proceedings violate the First Amendment.⁸⁸ If true, the public and the media have a constitutional right to attend dependency court proceedings and any party seeking to close such a proceeding would bear the burden of demonstrating that closure is "necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest."⁸⁹

The U.S. Supreme Court in four cases in the 1980s, defined the public's right to attend criminal court proceedings.⁹⁰ The Court held that the public has a right to attend all criminal trials,

⁸¹ Schellhas, *supra* note 47, at 641-656.

⁸² See U.S. CONST. Amend. I (stating "Congress shall make no law . . . abridging the freedom of speech, or of the press; . . .").

⁸³ See Jack B. Harrison, *How Open is Open? The Development of the Public Access Doctrine Under State Open Court Provisions*, 60 U. CIN. L. REV. 1307, 1310-12 (1992) (discussing the evolution of the presumption in America that all should have access to the courts and that court proceedings should be open to the public).

⁸⁴ See Jan. L. Trasen, *Privacy v. Public Access to Juvenile Court Proceedings: Do Closed Hearings Protect the Child or the System*, 16 B.C. THIRD WORLD L.J. 359, 373-74 (1995) ("The vast majority of states have statutes within their juvenile codes that grant the juvenile court judge the discretion to admit or exclude the public from juvenile proceedings").

⁸⁵ See *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982) (holding that states must show more than a fair preponderance of evidence to terminate parental rights).

⁸⁶ *Id.* at 759.

⁸⁷ See Samuel Broderick Sokol, *Trying Dependency Cases in Public: A First Amendment Inquiry*, 45 UCLA L. REV. 881, 883 (1998) (describing the extent to which courts are closed in various states).

⁸⁸ See *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982) (striking down a statute that excluded the general public from a trial involving a minor victim of a sexual offense).

⁸⁹ *Id.* at 607.

⁹⁰ Sokol, *supra* note 87, at 884 n. 13.

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including jury selection,⁹¹ preliminary hearings,⁹² and witness testimony.⁹³ [These cases are summarized on the following pages.]

A. FEDERAL CASE LAW

1. Richmond Newspapers v. Virginia

In *Richmond Newspapers, Inc., v. Virginia*,⁹⁴ the public's First and Fourteenth Amendment rights to attend criminal trials outweighed the defendant's concern about adverse effect. The case involved a trial court's order to close a murder trial to the public and press.⁹⁵ The defendant argued that publicity of the case would adversely affect the trial process.⁹⁶ Richmond Newspapers brought mandamus and prohibition petitions, but the Virginia Supreme Court dismissed them.⁹⁷ The U.S. Supreme Court reversed, holding that the First and Fourteenth Amendments guarantee the presumptive right of the public and the press to attend criminal trials.⁹⁸

In justifying its holding, the Court listed several benefits to the public of public attendance at criminal trials: community catharsis, education, increased public understanding of the rule of law, increased comprehension of the functioning of the entire criminal justice system and public confidence in the administration of justice.⁹⁹ The Court also described several benefits to the proceeding itself: enhanced performance, protection of the judge, and possibly bringing a proceeding to the attention of persons who might be able to furnish relevant evidence or contradict evidence already admitted.¹⁰⁰

Tracing the history of the public's right to attend criminal trials, Chief Justice Burger approvingly quoted Jeremy Bentham's proposition that "[w]ithout publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account."¹⁰¹ The Chief Justice also emphasized Bentham's idea that "open proceedings enhanc[e] the performance of all involved, protec[t] the judge from imputations of dishonesty, and serv[e] to educate the public."¹⁰² Burger's opinion pointed out that public trials have a "significant community therapeutic value"¹⁰³ and provide "an opportunity both for understanding the system in general and its

⁹¹ See *Press Enter. Co. v. Superior Court*, 464 U.S. 501, 510 (1984) [hereinafter *Press I*].

⁹² See *Press Enter. Co. v. Superior Court*, 478 U.S. 1, 10 (1986).

⁹³ See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 575-81 (1980); *Globe Newspaper*, 457 U.S. at 610 (striking down a statute excluding the general public from minor sex victim trials).

⁹⁴ 448 U.S. 555 (1980).

⁹⁵ See *id.* at 560.

⁹⁶ See *id.* at 561.

⁹⁷ See *id.* at 562.

⁹⁸ See *id.* at 581.

⁹⁹ See *id.* at 569-72.

¹⁰⁰ See *id.* at 569.

¹⁰¹ *Id.* at 569 (quoting 1 Jeremy Bentham, *RATIONALE OF JUDICIAL EVIDENCE* 524 (1827)).

¹⁰² *Id.* at 569 n. 7.

¹⁰³ *Id.* at 570.

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workings in a particular case."¹⁰⁴ He noted that public exposure to trials, even through the media, "contribute[s] to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system."¹⁰⁵ The Chief Justice stated:

When a shocking crime occurs, a community reaction of outrage and public protest often follows. Thereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. Without an awareness that society's responses to criminal conduct are underway, natural human reactions of outrage and protest are frustrated [N]o community catharsis can occur if justice is "done in a corner [or] in any covert manner."¹⁰⁶

Justice Brennan agreed with the Chief Justice, noting that "debate on public issues should be uninhibited, robust, and wide-open," as well as "informed."¹⁰⁷ Justice Brennan, however, expressed concern that the logic of his argument might be used to require public access to any judicial proceeding, and he warned that "access to a particular government process" depends on the function of the particular proceeding.¹⁰⁸ To Justice Brennan, the relevant issue was not the benefit of access for a particular citizen, but rather the benefit of access to the proceeding itself.¹⁰⁹

2. **Globe Newspaper Co. v. Superior Court**

*Globe Newspaper Co. v. Superior Court*¹¹⁰ further expanded *Richmond Newspapers* to allow the public into a trial even when minor rape victims testify. The Massachusetts Supreme Judicial Court held that a state statute required closing sex-offense trials during the testimony of juvenile sex crime victims. The statute in question provided an automatic bar to all cases in which minor victims of sex offenses testified, even if the victim, defendant, and prosecutor raised no objections to an open trial.¹¹¹ Representatives of the *Globe* sought to attend a rape trial in which two minor rape victims were expected to testify.¹¹² The U.S. Supreme Court ruled that closing the court proceeding for even a limited time during testimony of a very sensitive nature violated the First Amendment.¹¹³ Writing for the majority, Justice Brennan stated that "the right of access to criminal trials plays a particularly significant role in the functioning of the judicial process and the government as a whole."¹¹⁴

¹⁰⁴ *Id.* at 572.

¹⁰⁵ *Id.* at 573 (quoting *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 587 (1976)).

¹⁰⁶ *Id.* at 571 (citations omitted).

¹⁰⁷ *Id.* at 587 (Brennan, J., concurring) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

¹⁰⁸ *Id.* at 589 (noting that access to a government process must be "important in terms of that process").

¹⁰⁹ *See id.* (comparing *In re Winship*, 397 U.S. 358, 361-62 (1970)).

¹¹⁰ 457 U.S. 596 (1982).

¹¹¹ *See id.* at 611 (O'Connor, J., concurring).

¹¹² *See id.* at 598.

¹¹³ *See id.* at 610-11. "We emphasize that our holding is a narrow one: that a rule of mandatory closure respecting the testimony of minor sex victims is constitutionally infirm." *Id.* at 611 n. 27.

¹¹⁴ *Id.* at 606.

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Richmond Newspapers made clear that the right of access to criminal court proceedings could be restricted only upon a showing that the restriction was "necessitated by a compelling governmental interest and [was] narrowly tailored to serve that interest."¹¹⁵ *Globe Newspaper* extended the analysis and provided an important qualification. Massachusetts argued that safeguarding the physical and psychological well being of testifying minor rape victims was a compelling interest necessitating a restriction of the public's access to the proceeding.¹¹⁶ Though a majority of the justices agreed that this interest was "potentially compelling," the Court held that the statute mandating closure whenever such minors testified was not "narrowly tailored."¹¹⁷ In order to meet the requirement that the restriction be "narrowly tailored," Massachusetts trial courts were required to decide on a case-by-case basis whether a minor actually would be harmed by testifying in public and whether any available alternatives to restricting public access to the proceeding existed.¹¹⁸ Massachusetts also claimed that closing the proceedings would encourage minor victims of sex crimes to come forward and provide accurate testimony and that this result constituted a compelling interest sufficient to justify the restriction on the public's right of access.¹¹⁹ Because the state provided no support for its claim, however, the Court did not decide this question.¹²⁰

3. *Press-Enterprise Co. v. Superior Court*

*Press-Enterprise Co. v. Superior Court (Press I)*¹²¹ presented compelling issues -- protecting jurors' right to privacy and sealing a transcript from a preliminary hearing for murder -- but compelling issues alone are not sufficient. The courts also must consider alternatives to closing a hearing that address both the compelling issues and the public's right to know. A California trial court closed to the public all but three days of a six-week voir dire of a capital jury.¹²² The trial court asserted two interests to justify the closure: the defendant's right to a fair trial and the jurors' right to privacy.¹²³ Noting that the public right of access to jury selection was common practice in the United States when the Constitution was adopted, the Court restated the applicable standard that "[t]he presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest."¹²⁴ The Court found California's asserted interest to be insufficient to justify closure because the trial court failed to make adequate findings and did not consider alternatives to closure.¹²⁵

¹¹⁵ *Id.* at 607.

¹¹⁶ *See id.* at 607 n. 19.

¹¹⁷ *See id.* at 609.

¹¹⁸ *See id.* at 608. The court listed factors to be weighed in determining harm. The factors included the minor victim's age, psychological maturity, the crime, the victim's desires, and the interests of parents and relatives. *See id.*

¹¹⁹ *See id.* at 609.

¹²⁰ *See id.* at 609-10.

¹²¹ 464 U.S. 501 (1984).

¹²² *See id.* at 503.

¹²³ *See id.*

¹²⁴ *Id.* at 510.

¹²⁵ *See id.* at 510-11.

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In *Press-Enterprise Co. v. Superior Court (Press II)*,¹²⁶ the Supreme Court reversed a magistrate's order sealing the transcript of a forty-one day preliminary hearing in a capital murder trial.¹²⁷ The hearing was a recent development of the California criminal law, making historical analysis difficult for the Court. Seven of the justices likened the proceeding to preliminary hearings for criminal trials, which historically were open to the public;¹²⁸ two of the justices likened it to a grand jury, which historically was closed to the public.¹²⁹ Because the California courts had not considered alternatives to closure, the Supreme Court held that the order was neither "essential to preserve higher values" nor "narrowly tailored to serve that interest."¹³⁰

4. Lower Court Rulings

The U.S. Supreme Court has not considered the First Amendment beyond its application to criminal proceedings,¹³¹ but some lower courts have considered the issue. In *Publicker Industries, Inc. v. Cohen*,¹³² the Third Circuit held that "the First Amendment embraces a right of access to [civil] trials" and that "public access to civil trials 'enhances the quality and safeguards the integrity of the fact finding process.'"¹³³ The Second, Sixth and Seventh Circuits likewise approved this reasoning.¹³⁴ The Fifth Circuit Court of Appeals has not addressed the issue but a Fifth Circuit district court has held that the First Amendment guarantees public access to civil trials.¹³⁵ By implication, the Fourth Circuit has approved the existence of the right of access to civil trials.¹³⁶ The First, Eighth, Ninth, Tenth, Eleventh and D.C. Circuits have not specifically addressed the issue.¹³⁷

¹²⁶ 478 U.S. 1 (1986).

¹²⁷ *See id.* at 4-6.

¹²⁸ *See id.* at 15.

¹²⁹ *See id.* at 26.

¹³⁰ *Id.* at 13-14 (quoting *Press I*, 464 U.S. 501, 510 (1984)).

¹³¹ *See Sokol, supra* note 87, at 895.

¹³² 733 F.2d 1059 (3d Cir. 1984).

¹³³ *Id.* at 1070 (citing *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982)).

¹³⁴ *See Westmoreland v. Columbia Broad Sys., Inc.*, 752 F.2d 16, 23 (2d Cir. 1984); *In re Continental Ill. Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1178 (6th Cir. 1983).

¹³⁵ *See Doe v. Santa Fe Indep. Sch. Dist.*, 933 F. Supp. 647, 651 (S.D. Tex. 1996) (stating, upon review of other circuits, that closed trials are a "serious impairment of the public's ability to scrutinize governmental activity . . .").

¹³⁶ *See Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988) (affirming a right of access to documents filed in a summary judgment motion in a civil defamation case, barring compelling government interest).

¹³⁷ *See Sokol, supra* note 87, at 897.

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B. STATE CASE LAW

1. Minnesota Adult Court Cases

The Minnesota Supreme Court has held that excluding the public from adult criminal proceedings violates the defendant's constitutional right to a public trial.¹³⁸ In *State v. Schmit*,¹³⁹ a sodomy case, the trial judge excluded over the defendant's objections all but members of the bar and press and the defendant's relatives and friends.¹⁴⁰ Reversing the trial court decision, the supreme court offered numerous arguments for the importance and necessity of public trials. The court stated that "the right to a public trial can scarcely be regarded as less fundamental and essential to a fair trial than the right to assistance of counsel, also granted by the Sixth Amendment."¹⁴¹ The court explained that right to a public trial is a "limited privilege" subject to the court's power to exclude persons "for the preservation of order and decorum in the courtroom and to protect the rights of parties and witnesses."¹⁴² The court added that:

Where it appears that minors are unable to testify competently and coherently before an audience because of embarrassment or fright, temporary exclusion of the public is permissible. Our prior decisions hold that an adult witness may also be protected by temporary exclusion of the public when it appears that embarrassment prevents a full recital of the facts.¹⁴³

The *Schmit* court observed that a majority of jurisdictions defined a "public trial" to mean "a trial which the general public is free to attend."¹⁴⁴ Noting that "[t]he doors of the courtroom are expected to be kept open," the court referenced cases from other states that "reversed convictions obtained at trials where the public was excluded solely on account of the salacious nature of the crime or testimony likely to be given."¹⁴⁵ Though the exclusion orders made exceptions for friends, designated reporters or members of the bar, the orders were struck down in each case.¹⁴⁶ Addressing the case at hand, the supreme court noted that the presence of reporters at the trial would not guarantee "such complete, accurate, and impartial reporting as is necessary to safeguard defendant's rights or protect against judicial oppression"¹⁴⁷ Moreover, the court was not persuaded that "members of the bar, relatives, and friends can assume either to represent or speak for the entire community interest in securing that kind of judicial administration which is fair both to the accused and the prosecution."¹⁴⁸

¹³⁸ See *State v. Schmit*, 273 Minn. 78, 80-81, 139 N.W.2d 800, 802 (1966).

¹³⁹ 273 Minn. 78, 139 N.W.2d 800 (1966).

¹⁴⁰ See *id.* at 79, 139 N.W.2d at 802.

¹⁴¹ *Id.* at 80, 139 N.W.2d at 803.

¹⁴² *Id.*

¹⁴³ *Id.* at 81-82, 139 N.W.2d at 803-04 (footnotes omitted).

¹⁴⁴ *Id.* at 83-84, 139 N.W.2d at 84.

¹⁴⁵ *Id.*

¹⁴⁶ See *id.* at 83-84, 139 N.W.2d at 804-05; see also *Davis v. United States*, 247 F. 394 (8th Cir. 1917).

¹⁴⁷ *Schmit*, 273 Minn. At 83-83, 139 N.W.2d at 804-05.

¹⁴⁸ *Id.* at 85-86, 139 N.W.2d at 806.

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The *Schmit* court stated that "there is a vast difference between a trial from which everyone but a special class of persons is excluded and one which everyone except a designated few is free to attend."¹⁴⁹ The court noted that:

[The Constitution] contemplates that an accused be afforded all possible benefits that a trial open to the public is designed to assure. Unrestricted public scrutiny of judicial action is a meaningful assurance to an accused that he will be dealt with justly, protected not only against gross abuses of judicial power but also petty arbitrariness. The presence of an audience does have a wholesome effect on trustworthiness since witnesses are less likely to testify falsely before a public gathering. Further, the possibility that some spectator drawn to the trial may prove to be an undiscovered witness in possession of critical evidence cannot be ignored.¹⁵⁰

In *State v. McRae*,¹⁵¹ the Minnesota Supreme Court reversed a trial court order closing an adult criminal trial during testimony of a teenage complainant.¹⁵² The complainant was a fifteen-year-old girl who was sexually assaulted after she left a bus in Minneapolis and tried to find a friend's apartment.¹⁵³ The trial judge had based the order on Minnesota Statutes section 631.045,¹⁵⁴ which permitted exclusion of the public when the minor is victim and "closure is necessary to protect a witness or ensure fairness in the trial."¹⁵⁵ It held that closing the courtroom was "appropriate in these circumstances, given the fact that she's 15 years old and that she did appear to the court [in an off-the-record hearing] to be extremely apprehensive about her appearance here today."¹⁵⁶ In overturning the trial court, the supreme court noted that the trial court did not record its interview of the minor and thus "[t]he record does not disclose evidence or findings of a showing that closure was necessary to protect the witness or ensure fairness in the trial."¹⁵⁷

In *State v. Fageroos*,¹⁵⁸ the defendant was convicted of first degree burglary and first degree criminal sexual conduct. The trial court closed the courtroom during the testimony of the complainant and her sister, both minors.¹⁵⁹ The defendant appealed contending that the trial court committed error.¹⁶⁰ The Minnesota Court of Appeals affirmed on all other issues but remanded to the trial court for "findings to support the closure" of the trial.¹⁶¹ After the trial court

¹⁴⁹ *Id.* at 84, 139 N.W.2d at 804.

¹⁵⁰ *Id.* at 806-07 (footnotes omitted).

¹⁵¹ 494 N.W.2d 252 (Minn. 1992).

¹⁵² *See id.* at 259.

¹⁵³ *See id.* at 253.

¹⁵⁴ *See id.* at 258.

¹⁵⁵ Minn. Stat. § 631.045 (1990). The language of this statutory section has not changed except to update statutory sections referenced therein. *See* Minn. Stat. § 631.045 (1998).

¹⁵⁶ *McRae*, 494 N.W.2d at 258.

¹⁵⁷ *Id.* at 259.

¹⁵⁸ 531 N.W.2d 199 (Minn. 1995)

¹⁵⁹ *See id.* at 201.

¹⁶⁰ *Id.* at 200.

¹⁶¹ *See State v. Fageroos*, No. C0-92-1896, at *1 (Minn. Ct. App. July 20, 1993).

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made findings, the defendant again appealed contending that the findings were inadequate to support closure.¹⁶² The court of appeals affirmed.¹⁶³ The defendant appealed to the Minnesota Supreme Court, which held that the findings were inadequate to support closure but also decided that the case should be remanded to the trial court so that the state could have the opportunity to try to establish that closure was necessary.¹⁶⁴ If the state could not establish that closure was necessary, the court stated that the defendant would be entitled to a new trial.¹⁶⁵ Justice Tomljanovich dissented, stating that she would have remanded the case for a new trial.¹⁶⁶ She wrote: "I can appreciate that it will be embarrassing and awkward for the alleged victim and her sister to testify with spectators present at the trial; however, that alone is not a sufficient basis on which to deny a public trial."¹⁶⁷

In *State v. Biebinger*,¹⁶⁸ the defendant appealed from a conviction for criminal sexual conduct in the first degree and sentence as a patterned sex offender. The court of appeals reversed and remanded the case for a new trial holding that the closure had occurred without adequate findings of necessity and availability of other, better alternatives to closure.¹⁶⁹ Citing *State v. Fageroos*,¹⁷⁰ the Minnesota Supreme Court held that the appropriate remedy for the defendant was a remand for an evidentiary hearing regarding the necessity of closure because this hearing might remedy the violation.¹⁷¹

The courts have been more restrictive in otherwise open court proceedings when juveniles testify. In *Austin Daily Herald v. Mork*,¹⁷² the Minnesota Court of Appeals upheld an order excluding the public from a criminal trial during the testimony of juveniles, even though reporters were permitted to attend on condition that they not report the names of juveniles or information about previous confidential juvenile proceedings.¹⁷³ Mower County District Court Judge James L. Mork ruled that during cross-examination the defendant would be given wide latitude to inquire into the juveniles' prior contacts with the juvenile court system,¹⁷⁴ and thus the cross-examination would result in disclosure of information not generally accessible to the public. The court of appeals held that "[t]he state's interest in protecting the confidentiality of juvenile records and proceedings, while not unlimited, is 'important and substantial.'"¹⁷⁵ Further, the court held "[c]oupled with the compelling governmental interest in safeguarding the

¹⁶² See *State v. Fageroos*, No. C1-93-2453, at *1 (Minn. Ct. App. May 17, 1994).

¹⁶³ See *id.*

¹⁶⁴ See *State v. Fageroos*, 531 N.W.2d 199, 203 (Minn. 1995).

¹⁶⁵ See *id.*

¹⁶⁶ See *id.* (Tomljanovich, J., dissenting).

¹⁶⁷ *Id.*

¹⁶⁸ 585 N.W.2d 384 (Minn. 1998).

¹⁶⁹ See *id.* at 385.

¹⁷⁰ 531 N.W.2d 199 (Minn. 1995).

¹⁷¹ See *Biebinger*, 585 N.W.2d at 385.

¹⁷² 507 N.W.2d 854 (Minn. Ct. App. 1993) (order denying writ of prohibition).

¹⁷³ See *id.* at 858.

¹⁷⁴ See *id.* at 856.

¹⁷⁵ *Id.* at 858 (citing *Minneapolis Star & Tribune Co. v. Lee*, 353 N.W.2d 213, 215 (Minn. Ct. App. 1984)).

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physical and psychological well-being of juvenile witnesses, this interest supports the decision to limit access."¹⁷⁶

In *State v. Bashire*,¹⁷⁷ the state moved for closure of the courtroom during the testimony of two juvenile victims. The defendant did not object and instead agreed to a limited closure.¹⁷⁸ The trial court made no findings of necessity for closure but the court of appeals held that the defendant's failure to object and his agreement waived any error that could be predicated on the lack of findings.¹⁷⁹

2. Minnesota Juvenile Court Cases

The Minnesota Supreme Court considered public access to a juvenile court proceeding in *In re R.L.K., Jr. and T.L.K. v. Minnesota*.¹⁸⁰ Petitions to terminate parental rights of G.T.K. and R.L.K, Sr., were filed in December 1997 and February 1978.¹⁸¹ A reporter for the Minneapolis Star and Tribune attended the start of the juvenile court proceeding.¹⁸² When the parents questioned the reporter's presence, the court replied that "the rules of court allow the press to observe any hearings of that court and . . . that the reporter had agreed not to identify the children in any story."¹⁸³ The court added that "the public has a right to know how this Court conducts its business, especially in a Court having as much power as this one."¹⁸⁴

The parents' attorney objected to the reporter's presence and requested that the hearing be private because "what might come out of this trial might be rather difficult for certain people in this courtroom emotionally."¹⁸⁵ The children's attorney took no position on the reporter's presence but the assistant Hennepin County attorney said that the hearing should be private.¹⁸⁶ The juvenile court responded that the proceedings "should be private but not secret," and the reporter promised on the record not to use the name of anyone and to mask all addresses.¹⁸⁷ The court overruled the parents' objection "on the basis of the 'public's right to know its business' which 'overrides the potential injury that's been mentioned to me.'"¹⁸⁸

¹⁷⁶ *Id.*

¹⁷⁷ 606 N.W.2d 449 (Minn. Ct. App. 2000).

¹⁷⁸ *See id.* at 450.

¹⁷⁹ *See id.* at 454-55.

¹⁸⁰ 269 N.W.2d 367 (Minn. 1978).

¹⁸¹ *See id.* at 368.

¹⁸² *See id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *See id.*

¹⁸⁷ *See id.*

¹⁸⁸ *Id.*

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Subsequent to this discussion, the attorneys and court addressed Minnesota Statute section 260.155, subdivision 1.¹⁸⁹ The court stated that "one of the very basic cornerstones of American democracy is the public's right to know how governmental power is being exercised."¹⁹⁰ The court added that "the press, as representative of the general public, does have a direct interest in the work of the Court. It would seem to me the press is clearly under the intent of the Legislature."¹⁹¹ The court then denied a further motion by the parents to exclude the reporter and the matter was continued so that the parents' attorney could apply for a writ of prohibition with the Minnesota Supreme Court.¹⁹² The day after the above-noted hearing, an article appeared in the newspaper describing the events at the hearing. The article did not identify the children or parents' names or addresses.¹⁹³

On appeal, the Assistant County Attorney took no position on the issue; the children's attorney for the first time argued in favor of excluding the reporter.¹⁹⁴ The newspaper was allowed to proceed *amicus curiae* and participate in oral argument before the supreme court.¹⁹⁵ The issue presented to the court was "whether the juvenile court erred pursuant to Minn. St. 260.155, subd. 1, in denying petitioners' motion to exclude the news media from the juvenile proceeding."¹⁹⁶ Petitioners argued that "the cornerstone of juvenile court policy of protecting family ties is the privacy accorded juvenile records and proceedings."¹⁹⁷ They claimed that "to allow news media representatives to attend a juvenile proceeding over the objections of the parties would render the Minnesota juvenile court system indistinguishable from the adult criminal adjudicative process."¹⁹⁸ Petitioners also argued that the juvenile proceedings should be private unless the permission of everyone concerned was obtained.¹⁹⁹

The Minnesota Supreme Court noted that the juvenile court possessed discretion to admit those who "have a direct interest [in the case] or in the work of the court."²⁰⁰ It held that "[t]he weight of authority is that the news media have a 'direct interest' in the work of a juvenile court and it is not an abuse of discretion to allow a reporter to be present at a juvenile proceeding."²⁰¹ The court noted that:

The news media have a strong interest in obtaining information regarding our legal institutions and an interest in informing the public about how judicial power

¹⁸⁹ See Minn. Stat. § 260C.163, subd. 1(c) (1998) (formerly codified as Minn. Stat. § 260.155, subd. 1(c)) (permitting exclusion of all individuals without a direct interest in the case).

¹⁹⁰ *In re Welfare of R.L.K., Jr., and T.L.K.*, 269 N.W.2d at 369.

¹⁹¹ *Id.* at 369.

¹⁹² See *id.*

¹⁹³ See *id.*

¹⁹⁴ See *id.*

¹⁹⁵ See *id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ See *id.* at 370.

²⁰⁰ *Id.*

²⁰¹ See *id.*

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in juvenile court is being exercised. The news media thus clearly have "a direct interest . . . in the work of the court" within the meaning of Minn. St. 260.155, subd. 1²⁰²

In 1993, the Minnesota Court of Appeals issued an unpublished opinion denying a writ of mandamus sought by Northwest Publications against the district court judge Anne V. Simonett.²⁰³ The petitioner sought to compel the trial court "to admit a reporter to a hearing on the termination of parental rights, where the reporter's attendance was requested by the mother whose rights were at issue."²⁰⁴ Ruling against the petition, the court held that the trial court possessed discretion to admit or deny reporters to termination hearings,²⁰⁵ and that "mandamus may not be used to control judicial discretion."²⁰⁶

In *Minneapolis Star and Tribune Co. v. Schmidt*,²⁰⁷ the Minnesota Court of Appeals granted a writ of prohibition in a case in which the juvenile court: 1) denied the newspaper's motion to open the pending proceedings; 2) denied the newspaper's access to juvenile court records about the pending proceeding; 3) prohibited the news media generally from publishing information about the matter; and 4) forbade trial participants from discussing or releasing information about the matter to the media.²⁰⁸ The Star Tribune contested only the third portion of the juvenile court's order, which stated:

[N]o representatives of the news media shall identify in any story or any news report in any way the identities of any juvenile connected with this case, whether a party or as a witness; nor, the identity of the Respondent parents involved in this case. That this shall include prohibition on the disclosure or identification of any such person or minor by name, residence, occupation, place of school attendance, foster placement, photographs, sketches, or any reference to previously identified characteristics.²⁰⁹

Subsequently, the juvenile court amended this provision to include "'the names of all attorneys of record in this case among those persons whose identity shall not be revealed in any story or news report."²¹⁰

The issue before the court of appeals was whether the juvenile court erred in prohibiting the news media from publishing information about a pending juvenile court matter when the

²⁰² *Id.* at 371.

²⁰³ See *Northwest Publications, Inc. v. The Honorable Anne V. Simonett, Judge of District Court, No. C7-93-1968* (Minn. Ct. App. Oct. 6, 1993) (order denying petition for writ of mandamus) (citing Minn. Stat. § 586.01 (1992)).

²⁰⁴ See *id.* at 1.

²⁰⁵ *Id.* (citing *In re Welfare of R.L.K., Jr. and T.L.K.*, 269 N.W.2d 367, 370 (Minn. 1978)).

²⁰⁶ *Id.* (citing Minn. Stat. § 586.01 (1992)).

²⁰⁷ 360 N.W.2d 433 (Minn. Ct. App. 1985).

²⁰⁸ See *id.* at 434.

²⁰⁹ *Id.*

²¹⁰ *Id.*

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information was obtained legally from "public records and independent sources."²¹¹ The Minnesota Court of Appeals began its analysis by noting that "the main purpose of the first amendment guarantee of freedom of the press was 'to prevent previous restraints upon publication.'"²¹² The court emphasized that "[a]ny prior restraint of speech is reviewed 'bearing a heavy presumption against its constitutional validity.'"²¹³ Though the juvenile court justified its order by the compelling interest that "one of the children involved would be traumatized by further publicity,"²¹⁴ the child's psychiatrist testified that the primary causes of the child's anxiety were "recurrent interrogation and removal from the home."²¹⁵

The court of appeals held that the juvenile court's order was an unconstitutional prior restraint of publication because it "was not 'narrowly tailored' to protect the purported compelling interest."²¹⁶ The court stated that a potential increase in a child's anxiety does not constitute a compelling state interest sufficient to justify "a restraint on the publication of information obtained from public records and independent sources."²¹⁷ The court stated:

By placing the information in the public domain on official court records, the State must be presumed to have concluded that the public interest was thereby served. Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business.²¹⁸

3. Other States' Case Law

The Ohio Supreme Court, New Jersey Supreme Court and a panel of the California Court of Appeal have considered public access to dependency court hearings. The Ohio Supreme Court²¹⁹ and a panel of the California Court of Appeals²²⁰ considered and rejected a First Amendment right to attend dependency court proceedings. The New Jersey court, however, expressly held that the public's right to attend civil trials encompasses the qualified right to attend dependency cases.²²¹

²¹¹ *See id.*

²¹² *Id.* at 435 (citing *Near v. Minnesota*, 283 U.S. 697, 713 (1931)).

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *See id.*

²¹⁶ *Id.* at 436.

²¹⁷ *Id.*

²¹⁸ *Id.* (citing *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975)).

²¹⁹ *See In re T.R.*, 556 N.E.2d 439, 447 (Ohio 1990).

²²⁰ *See San Bernadino County Dept. of Pub. Soc. Servs. v. Superior Court*, 283 Cal. Rpt. 332, 334 (Ct. App. 1991).

²²¹ *See New Jersey Div. Of Youth & Family Servs. v. J.B.*, 576 A.2d 261, 270 (N.J. 1990).

Appendix A

**STATE OF MINNESOTA
IN SUPREME COURT
C2-95-1476**

**ORDER ESTABLISHING PILOT PROJECT ON
OPEN HEARINGS IN JUVENILE PROTECTION MATTERS**

WHEREAS, the Supreme Court Foster Care and Adoption Task Force recommended that hearings in juvenile protection proceedings be presumed open absent exceptional circumstances and that the corresponding juvenile file be accessible to the public, except for certain documents and reports; and

WHEREAS, the Open CHIPS Proceedings Subcommittee of the Conference of Chief Judges held a hearing on the Task Force recommendation on November 21, 1997; and

WHEREAS, the Open CHIPS Proceedings Subcommittee of the Conference of Chief Judges, the Conference of Chief Judges Administration Committee, and the full Conference of Chief Judges recommended that this Court establish an open hearings pilot project in representative metropolitan, suburban, and rural jurisdictions to be evaluated by an independent research organization; and

WHEREAS, open hearings in juvenile protection proceedings are authorized in other states, (See e.g. Michigan Rules of Juvenile Procedure 5.925(A); 22 New York Codes, Rules, and Regulations 205.4; and *Oregonian Pub. Co. v. Deiz*, 613 P.2d 23 (Or. 1980));

NOW, THEREFORE, by virtue of and under the inherent power and statutory authority of the Minnesota Supreme Court to regulate public access to records and proceedings of the judicial branch, IT IS HEREBY ORDERED that:

1. Subject to the requirements of this order and rules promulgated by this Court, each judicial district is hereby authorized to conduct a three year pilot project in one or more counties designated by the chief judge of the district, using open hearings in the following juvenile court proceedings: child in need of protection or services proceedings including permanent placement proceedings, termination of parental rights proceedings and subsequent state ward reviews.
2. Open proceedings authorized pursuant to this order shall be presumed open and may be closed or partially closed by the presiding judge only in exceptional circumstances.

3. The pilot projects shall begin June 1, 1998.
4. The State Court Administrator, in consultation with the Conference of Chief Judges and this Court, shall contract with an independent research organization to conduct an evaluation of the pilot projects authorized pursuant to this order. On or before August 1, 2001, such organization shall file with this Court a report addressing the impact of open hearings and records.
5. The Minnesota Supreme Court Advisory Committee on Open Juvenile Protection Hearings is hereby established to consider and recommend rules regarding public access to records relating to open juvenile protection hearings. The advisory committee shall file its recommendations with this Court on or before April 15, 1998. The following individuals are hereby appointed as members of the advisory committee:

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Appendix B

**STATE OF MINNESOTA
IN SUPREME COURT
C2-95-1476**

**ORDER PROMULGATING RULE ON
PUBLIC ACCESS TO RECORDS RELATING TO
OPEN JUVENILE PROTECTION PROCEEDINGS**

WHEREAS, by order dated January 22, 1998, this Court established a three year pilot project authorizing open hearings in juvenile protection proceedings and appointed an advisory committee to consider and recommend rules regarding public access to records relating to open juvenile protection hearings; and

WHEREAS, the Advisory Committee on Open Hearings in Juvenile Protection Proceedings has filed its Final Report, dated April 15, 1998, recommending adoption of a Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Hearings ("Proposed Rule"); and

WHEREAS, by order dated April 15, 1998, this Court established a May 15, 1998 deadline for submission of comments on the Proposed Rule; and

WHEREAS, the Court has reviewed the comments and is advised in the premises.

NOW, THEREFORE, by virtue of and under the inherent power and statutory authority of the Minnesota Supreme Court to regulate public access to records and proceedings of the judicial branch, IT IS HEREBY ORDERED that:

1. The attached Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings, be, and the same hereby is, prescribed and promulgated to be effective as directed therein.
2. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.

Dated: May 28, 1998

By the Court:

/S/

Kathleen A. Blatz
Chief Justice

C.

RULE ON PUBLIC ACCESS TO RECORDS
RELATING TO OPEN JUVENILE PROTECTION PROCEEDINGS

Subdivision 1. Presumption of Public Access to Records.

Except as otherwise provided in this rule, all case records relating to the pilot project on open juvenile protection proceedings are presumed to be accessible to any member of the public for inspection, copying, or release. For purposes of this rule, "open juvenile protection proceedings" are all matters governed by the juvenile protection rules promulgated by the Minnesota Supreme Court.

Subdivision 2. Effective Date.

All case records deemed accessible under this rule and filed on or after June 22, 1998, shall be available to the public for inspection, copying, or release. All case records deemed accessible under this rule and filed prior to June 22, 1998, shall not be available to the public for inspection, copying, or release.

Subdivision 3. Applicability of Rules of Public Access to Records of the Judicial Branch.

Except where inconsistent with this rule, the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court shall apply to records relating to open juvenile protection proceedings. Subdivisions 1(a) and 1(c) of Rule 4 of the Rules of Public Access to Records of the Judicial Branch, which prohibit public access to domestic abuse restraining orders and judicial work products and drafts, are not inconsistent with this rule.

Subdivision 4. Records That Are Not Accessible to the Public.

Except for exhibits identified in subdivision 5 of this rule, the following case records relating to open juvenile protection proceedings shall not be accessible to the public:

- (a) transcripts, stenographic notes and recordings of testimony of anyone taken during portions of proceedings that are closed by the presiding judge;
- (b) audio tapes or video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child;
- (c) victim's statements;
- (d) portions of juvenile court records that identify reporters of abuse or neglect;
- (e) HIV test results;
- (f) medical records and chemical dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records;
- (g) sexual offender treatment program reports;
- (h) portions of photographs that identify a child;
- (i) application for ex parte emergency protective custody order, and any resulting order, until the hearing where all parties have an opportunity to be heard on the custody issue, provided that, if the order is requested in a CHIPS petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of this section (i);
- (j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault;

(k) notice of pending court proceedings pursuant to 25 U.S.C. 1912 (the Indian Child Welfare Act);

(l) records or portions of records which the court in exceptional circumstances has deemed inaccessible to the public; and

(m) records or portions of records that identify the home or institution in which a child is placed pursuant to a foster care placement, pre-adoptive placement, or adoptive placement.

Subdivision 5. Access to Exhibits.

Case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order.

Subdivision 6. Access to Court Information Systems.

Except where authorized by the district court, there shall be no direct public access to juvenile court case records maintained in electronic format in court information systems.

Subdivision 7. Protective Order

Upon motion and hearing, a court may issue an order prohibiting public access to juvenile court case records that are otherwise accessible to the public when the court finds that there are exceptional circumstances supporting issuance of the order. The court may also issue such an order on its own motion and without a hearing pursuant to subdivision 4(l) of this rule, but shall schedule a hearing on the order as soon as possible at the request of any person.

Subdivision 8. Case Captions.

All juvenile protection files opened in a pilot project county on and after June 22, 1998, shall be captioned in the name of the parent(s) or the child's legal custodian or legal guardian as follows: "In the matter of child(ren) of _____, parent/legal guardian/legal custodian."

Subdivision 9. Statutes Superseded.

Minnesota Statutes, section 260.161, subdivision 2, as amended by 1998 Minn. Laws, chapter 406, article 1, section 28 and 1998 Minn. Laws chapter 407, article 9, section 27, and all other statutes inconsistent or in conflict with this rule are superseded insofar as they apply to public access to records of open juvenile protection proceedings.

Advisory Committee Comment-1998

Under subdivision 1, application of this rule is limited to case records of the pilot project on open juvenile protection proceedings, which includes all proceedings identified in Rule 37 of the Minnesota Rules of Juvenile Procedure (1997) and any successor provision. *See Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters, #C2-95-1476* (Minn. S. Ct. filed Jan. 22, 1998). Rule 37 as currently written does not include adoption proceedings. Thus, this rule would not apply to any case records relating to adoption proceedings. The Committee is aware that the juvenile protection rules are in the process of

being updated by another advisory committee. To the extent that there are substantive changes made to Rule 37, those changes would effect the pilot project.

Subdivision 1 establishes a presumption of public access to juvenile court case records, and exceptions to this presumption are set forth in the remaining subdivisions. Subdivision 2 specifies the effective date of the pilot project as the cut off for public access. Case records deemed accessible under this rule and filed on or after June 22, 1998, shall be available to the public for inspection, copying, or release. Case records filed prior to June 22, 1998, shall not be available to the public for inspection, copying, or release under this rule; public access to these records is governed by existing rules and statutes.

Subdivision 3 incorporates the provisions of the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court ("Access Rules"), except to the extent that the Access Rules are inconsistent with this rule. The Access Rules establish the procedure for requesting access, the timing and format of the response, and an administrative appeal process. The Access Rules also define "case records" as a subcategory of records maintained by a court. Thus, "case records" would not include items that are not made a part of the court file, such as notes of a social worker or guardian ad litem. Aggregate statistics on juvenile court cases that do not identify any participants or a particular case are included in the "administrative records" category and are accessible to the public under the Access Rules. Such statistics are routinely published by the courts in numerous reports and studies. These procedures and definitions are consistent with this rule.

One significant aspect of both this rule and the Access Rules is that they govern public access only. Participants in a juvenile protection case may have greater access rights than the general public. *See, e.g.*, Minn.R.Juv.P. 64.02, subdivision 2 (1997).

Subdivision 3 preserves the confidentiality of domestic abuse restraining orders issued pursuant to Minn. Stat. § 518B.01 (1996). The address of a petitioner for a restraining order under section 518B.01 must not be disclosed to the public if nondisclosure is requested by the petitioner. Minn. Stat. § 518B.01, subd. 3b (1996). All other case records regarding the restraining order must not be disclosed until the temporary order made pursuant to subdivision 5 or 7 of section 518B.01 is served on the respondent. Access Rule 4, subdivision 1(a) (1998).

Subdivision 3 prohibits public access to judicial work products and drafts. These include notes, memoranda and drafts prepared by a judge or court employed attorney, law clerk, legal assistant or secretary and used in

the process of preparing a decision or order, except the official court minutes prepared pursuant to Minn. Stat. § 564.24-.25 (1996). Access Rule 4, subd. 1(c) (1998).

The court services provision of Rule 4, subdivision 1(b) of the Access Rules, is inconsistent with this rule. The advisory committee is of the opinion that public access to reports and recommendations of social workers and guardians ad litem, which become case records, is an integral component of the increased accountability that underlies the pilot project. Court rulings will necessarily incorporate significant portions of what is set forth in those reports, and similar information is routinely disclosed in family law cases.

Subdivision 4(a) prohibits public access to testimony of anyone taken during portions of a proceeding that are closed by the presiding judge. The Supreme Court has directed that hearings under the pilot project may be closed or partially closed by the presiding judge only in exceptional circumstances. *Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters*, #C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998).

Subdivision 4(b) prohibits public access to audio tapes and video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This includes all tapes made pursuant to Minn. Stat. § 626.561, subd. 3 (1996) during the course of a child abuse assessment, criminal investigation, or prosecution. This is consistent with Minn. Stat. § 13.391 (1996), which prohibits an individual who is a subject of the tape from obtaining a copy of the tape without a court order. *See also In re Application of KSTP Television v. Ming Sen Shiue*, 504 F.Supp. 360 (D.Minn. 1980) (television station not entitled to view and copy 3 hours of video tapes received in evidence in criminal trial). Similarly, subdivision 4(c) prohibits public access to victims' statements, and this includes written records of interviews of victims made pursuant to Minn. Stat. § 626.561, subd. 3 (1996). This is consistent with Minn. Stat. §§ 609.115, subs. 1, 5; 609.2244; 611A.037 (1996 and 1997 Supp.) (pre-sentence investigations to include victim impact statements; no public access; domestic abuse victim impact statement confidential).

Although victims' statements and audio tapes and video tapes of child alleging or describing abuse or neglect are inaccessible to the public under subdivisions 4(b) and 4(c), this does not prohibit the attorneys for the parties or the court from including information from the statements or tapes in the petition, court orders, and other documents that are otherwise accessible to the public. In contrast, subdivision 4(d) prohibits public access to "information identifying reporters of abuse or neglect." By precluding public access to "information" identifying reporters of abuse

or neglect, the advisory committee did not intend to preclude public access to any other information included in the same document. Thus, courts and court administrators must redact identifying information from otherwise publicly accessible documents and then make the edited documents available for inspection and copying by the public. Similarly, subdivision 4(e) requires that courts and court administrators redact from any publicly accessible juvenile court record any reference to HIV test results, and subdivision 4(h) requires administrators to redact the face or other identifying features in a photograph of a child.

The prohibition of public access to the identity of reporters of abuse or neglect under subdivision 4(d) is consistent with state law governing access to this information in the hands of social services, law enforcement, court services, schools and other agencies. Minn. Stat. § 626.556 (1996 and Supp. 1997). Subdivision 4(d) is also intended to help preserve federal funds for child abuse prevention and treatment programs. *See* 42 U.S.C. §§ 5106a(b)(2)(A); 5106a(b)(3) (1998); 45 C.F.R. §§ 1340.1 to 1340.20 (1997). Subdivision 4(d) does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Subdivision 4(e) prohibits public access to HIV test results. This is consistent with state and federal laws regarding court ordered testing for HIV. Minn. Stat. § 611A.19 (1996) (defendant convicted for criminal sexual conduct; no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services); 42 U.S.C. § 14011 (1998) (defendant charged with crime; test result may be disclosed to victim only). The Committee is also aware that federal funding for early intervention services requires confidential treatment of this information. 42 U.S.C. §§ 300ff-61(a); 300ff-63 (1998).

Subdivisions 4(f) and 4(g) prohibit public access to medical records, chemical dependency evaluations and records, psychological evaluations and records, psychiatric evaluations and records and sex offender treatment program reports, unless admitted into evidence (see subdivision 5). This is consistent with public access limitations in criminal and juvenile delinquency proceedings that are open to the public. *See, e.g.*, Minn. Stat. § 609.115, subd. 6 (1996) (presentence investigation reports). Practitioners and the courts must be careful not to violate applicable federal laws. Under 42 U.S.C. § 290dd-2 (1998), records of all federally assisted or regulated substance abuse treatment programs, including diagnosis and evaluation records, and all confidential communications made therein, except information required to be reported under a state mandatory child abuse reporting law, are confidential and may not be disclosed by the program unless disclosure is authorized by consent or court order. Thus, practitioners will have to obtain the relevant consents or court orders,

including protective orders, before disclosing certain medical records in their reports and submissions to the court. *See* 42 C.F.R. §§ 2.1 to 2.67 (1997) (comprehensive regulations providing procedures that must be followed for consent and court-ordered disclosure of records and confidential communications).

Although similar requirements apply to educational records under the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. §§ 1232g, 1417, and 11432 (1998); 34 C.F.R. §§ 99.1 to 99.67 (1997), FERPA allows schools to disclose education records without consent or court order in certain circumstances, including disclosures to state and local officials under laws in effect prior to November 19, 1974. 20 U.S.C. § 1232g(b)(1)(E)(i) (1998); 34 C.F.R. § 99.31(a)(5)(i)(A) (1997). Authorization to disclose truancy to the county attorney, for example, was in effect prior to that date and continues under current law. *See* Minn. Stat. § 120.12 (1974) (superintendent to notify county attorney if truancy continues after notice to parent); 1987 Minn. Laws ch. 178, § 10, (repealing section 120.12 and replacing with current section 120.103, which adds mediation process before notice to county attorney); *see also* Minn. Stat. § 260A.06-.07 (1996) (referral to county attorney from school attendance review boards; county attorney truancy mediation program notice includes warning that court action may be taken). Practitioners will have to review the procedures under which they receive education records from schools and, where necessary, obtain relevant consents or protective orders before disclosing certain education records in their reports and submissions to the court. Additional information regarding FERPA may be found in *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs* (U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. 20531, June 1997) (includes hypothetical disclosure situations and complete set of federal regulations).

Subdivision 4(h) requires administrators to redact the face or other identifying features in a photograph of a child before permitting public access. Any appropriate concern regarding public access to the remaining portions of such a photograph can be addressed through a protective order (see Subdivision 7).

Subdivision 4(i) precludes public access to an ex parte emergency protective custody order, until the hearing where all parties have an opportunity to be heard on the custody issue. This provision is designed to reduce the risk that a parent, guardian, or custodian would try to hide a child before the child can be placed in protective custody or to take the child from custody before the court can hear the matter. *See, e.g.*, Minn.R.Juv.P. 51 (1997) (order must either direct that child be brought immediately before the court or taken to a placement facility designated by the court; parent,

guardian and custodian, if present when child is taken into custody, shall immediately be informed of existence of order and reasons why child is being taken into custody). Subdivision 4(i) also precludes public access to the application or request for the protective custody order, except that if the request is made in a CHIPS petition, only that portion of the petition that requests the order is inaccessible to the public.

Subdivision 4(j) precludes public access to portions of records that specifically identify a minor victim of sexual assault. This will require court administrators to redact information from case records that specifically identifies the minor victim, including the victim's name and address. Subdivision 4(j) does not preclude public access to other information in the particular record. This is intended to parallel the treatment of victim identities in criminal and juvenile delinquency proceedings involving sexual assault charges under Minn. Stat. § 609.3471 (1996). Thus, the term "sexual assault" includes any act described in Minnesota Statutes, §§ 609.342, 609.343, 609.344, and 609.345. The Committee considered using the term "sexual abuse" but felt that it was a limited subcategory of "sexual assault." See Minn. Stat. § 626.556, subd. 2(a) (1996) ("sexual abuse" includes violations of 609.342-.345 committed by person in a position of authority, responsible for child's care, or having a significant relationship with the child). Subdivision 4(j) does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Subdivision 4(k) precludes public access to the notice of pending proceedings given to an Indian child's tribe or to the Secretary of the Interior pursuant to 25 U.S.C. § 1912(a) (1998). The notice includes extensive personal information on the child, including all known information on direct lineal ancestors, and requires parties who receive the notice to keep it confidential. 25 C.F.R. § 23.11(d), (e) (1997). Notices are routinely given in doubtful cases because lack of notice can be fatal to a state court proceeding. See 25 U.S.C. § 1911 (1998) (exclusive jurisdiction of tribes; right to intervene; transfer of jurisdiction). The Committee felt that public access to information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes or petitions for transfer of jurisdiction. Subdivision 4(k) does not preclude public access to intervention motions or transfer petitions.

Subdivision 4(l) recognizes that courts may, in exceptional circumstances, issue protective orders precluding public access to certain records or portions of records. Exceptional circumstances is the standard promulgated by the Supreme Court for closure of portions of proceedings. See *Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters*, #C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998) Records of closed

proceedings are inaccessible to the public under subdivision 4(a). Procedures for issuing protective orders are set forth in Subdivision 7.

Subdivision 4(m) prohibits public access to identifying information (i.e., names, addresses, etc.) of foster parents, foster care institutions, and adoptive parents, and other persons and institutions providing pre-adoptive care of the child. This is consistent with the confidentiality accorded adoption proceedings. It is also designed to reduce the risk of continuing contact by someone whose parental rights have been terminated or who is a potentially dangerous family member.

Notwithstanding the list of inaccessible case records in subdivision 4(a) through 4(m), many case records of the pilot project will typically be accessible to the public. Examples include: petitions other than petitions for paternity; summons; affidavits of publication or service; certificates of representation; orders; hearing and trial notices; subpoenas; names of witnesses; motions and supporting affidavits and legal memoranda; transcripts; and reports of a social worker or guardian ad litem. With the exception of information that must be redacted under subdivisions 4(d), 4(e) and 4(h), these records will be accessible to the public notwithstanding that they contain a summary of information derived from another record that is not accessible to the public. For example, a social services or court services report recommending placement might discuss the results of a chemical dependency evaluation. Although the chemical dependency evaluation is not accessible to the public, the discussion of it in the social services or court services report need not be redacted prior to public disclosure of the report. Finally, it must be remembered that public access under this rule would not apply to records filed with the court prior to the effective date of the pilot project (see subdivision 2) or to reports of a social worker or guardian ad litem that have not been made a part of the court file (see subdivision 3).

Subdivision 5 of this rule permits public access to records that have been received in evidence as an exhibit, unless the records are subject to a protective order (see subdivision 7). Thus, any of the records identified in subdivisions 4(b) through 4(k) that have been admitted into evidence as an exhibit are accessible to the public, unless there is a protective order indicating otherwise. An exhibit that has been offered, but not expressly admitted by the court, does not become accessible to the public under subdivision 5. Exhibits admitted during a trial or hearing must be distinguished from items attached as exhibits to a petition or a report of a social worker or guardian ad litem. Merely attaching something as an "exhibit" to another filed document does not render the "exhibit" accessible to the public under subdivision 5.

Subdivision 6 prohibits direct public access to case records maintained in electronic format in court information systems unless authorized by the court. Subdivision 6 intentionally limits access to electronic formats as a means of precluding widespread distribution of case records about children into larger, private databases that could be used to discriminate against children for insurance, employment, and other purposes. This concern also led the Committee to recommend that case titles in the petition and other documents include only the names of the parent or other guardian, and exclude the names or initials of the children (see subdivision 8). Subdivision 6 allows the courts to prepare calendars that identify cases by the appropriate caption. To the extent that court information systems can provide appropriate electronic formats for public access, subdivision 6 allows the court to make those accessible to the public, for example, by order of the chief judge of the judicial district.

Subdivision 7 establishes two categories of protective orders. One is made on motion of a party after a hearing, and the other is made on the court's own motion without a hearing, subject to a later hearing if requested by any person, including representatives of the media. In any case, a protective order may issue only in exceptional circumstances. *See Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters*, #C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998). The advisory committee felt that these procedures would provide adequate protection and flexibility during the pilot project.

The change in case captions under Subdivision 8 is designed to minimize the stigma to children involved in open juvenile protection proceedings. It is more appropriate to label these cases in the name of the adults involved, who are often the perpetrators of abuse or neglect.

NATIONAL CENTER FOR STATE COURTS

**MINNESOTA SUPREME COURT
STATE COURT ADMINISTRATOR'S
OFFICE**

**KEY FINDINGS FROM THE
EVALUATION OF OPEN HEARINGS
AND COURT RECORDS IN JUVENILE
PROTECTION MATTERS**

FINAL REPORT-VOLUME I

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Executive Summary

Introduction: On June 22, 1998, Minnesota joined sixteen other states that had opened up some portion of their juvenile protection proceedings and/or records to the public. The opening of child protection hearings and records to the public is a break with the tradition of confidentiality which has long been the hallmark of the juvenile court, but it is consistent with recent efforts to make the juvenile court more accountable for the decisions it renders (Snyder and Sickmund, 1999). Children in need of protection or services (CHIPS) cases in juvenile court (including permanent placement, termination of parental rights, and subsequent state ward reviews) were opened to the public in 12 Minnesota counties²²² for a three-year pilot project. The Minnesota Supreme Court Office of the State Court Administrator subsequently contracted with the National Center for State Courts (NCSC) for an evaluation of the Open Juvenile Protection Proceedings Pilot Project. The purpose of the evaluation was to provide decision-makers with relevant information to assist their deliberations regarding whether open hearings/records should be expanded statewide or whether the project should be terminated. To the best of our knowledge, no other state has conducted an evaluation of open hearings/records in child protection proceedings.

Methodology: The NCSC project team employed a multi-method approach to collect data and information regarding open hearings and records in child protection matters. The data and information collection methods included:

- Site visits, Interviews and Focus Groups
- Two waves of surveys of child protection professionals²²³ and the media
- Logbooks, maintained by the courts, recording instances of closed hearings, protective orders, and records requests
- Court case files review
- Compilation of annual data on the number of dependency and neglect filings and appeals of Termination of Parental Rights (TPR) and CHIPS cases
- Compilation of newspaper articles on the subject of open hearings/records in child protection proceedings

Results: The impact of open hearings/records in child protection proceedings can be best understood by examining its effect on five critical subject areas: (1) hearings; (2) records access; (3) potential for harm; (4) public awareness and professional accountability; and (5) overall impact.

Hearings: To investigate the impact of open hearings on the conduct and nature of hearings, the following subjects were examined: (1) hearing participants; (2) instances of

²²² Chisago, Clay, Goodhue, Hennepin, Houston, Le Sueur, Marshall, Pennington, Red Lake, Stevens, St. Louis, and Watonwan Counties.

²²³ Professionals surveyed included judges/referees, county attorneys, court administrators, public defenders, guardians ad litem (GALs), and social workers.

“closures” in child protection proceedings; (3) effects on the content of court documents (e.g., pleadings, reports, and exhibits); and (4) effects on court procedures and demands on court resources.

- **Finding:** In the opinion of the majority of child protection professionals responding to the survey, open hearings have led to a slight but noticeable increase in attendance at child protection proceedings. The majority of respondents to the professional surveys observed an increase in the number of people in the “courtroom audience.” Among the respondents reporting an increase in the size of the courtroom audience, 90 percent reported that the increase was five or fewer individuals per hearing. Most of the new participants are members of the extended family and foster parents, along with service providers. The data suggest that there may be an ongoing trend toward increased participation by these groups in open hearings.
- **Finding:** Closures of open child protection hearings occurred very infrequently in the pilot counties.
- **Finding:** In the opinion of the child protection professionals surveyed, the content of courtroom documents, exhibits, and statements has not been significantly affected by open hearings/records. Among the professionals, judges and county attorneys were slightly more likely to observe changes than other professionals. Narrative responses to the survey indicate a division of opinion regarding how documents, exhibits and statements have changed. Some judges and county attorneys report more reticence to include sensitive information (e.g., psychological evaluations, information on sexual assaults) while others report fewer unsubstantiated allegations and timelier, better-prepared court documents.
- **Finding:** Open hearings/records have not had much of an effect on court procedures. There is little evidence that the duration of hearings was appreciably affected nor is there compelling evidence that the nature of in-court discussions has changed. However, there has been a significant impact on the workload of administrative staff resulting from the record keeping requirements in the court order and the need to address public requests for documents.

Records Access: To investigate the effect of open hearings/records on record requests and processing, several issues were examined, including: (1) the types of documents requested; (2) the persons requesting documents; (3) the frequency of protective orders and appeals of protective orders; and (4) impact on court administrative practices and resources. Data to address these issues came from the surveys, from logbooks maintained by the courts, and from an in-depth file review of Hennepin County cases.

- **Finding:** The file review showed that orders, requests for the entire file, petitions, progress reports, and placement orders were the type of

documents most frequently requested in Hennepin County. There was no systematic pattern to the type of documents requested by individuals outside the courtroom workgroup²²⁴.

- **Finding:** Most requests for documents in Hennepin County continue to originate from within the courtroom workgroup, with requests from others accounting for only about 7 percent of all document requests. WATCH²²⁵ was prominent among the requesters from outside the courtroom workgroup. Because WATCH is less active in the pilot counties outside of Hennepin, document requests by WATCH in these counties can be expected to occur with much less frequency than in Hennepin County. Among the courtroom workgroup, the county attorneys, social workers and the Parental Fee Unit were the principal requesters.
- **Finding:** Protective orders are issued very infrequently and subsequent appeals of these orders occur with even less frequency.
- **Finding:** The very real demands²²⁶ made on court administrative staff as a result of open hearings/records appeared to have their greatest impact early after the project commenced and became less of a burden with the passage of time. The small number of records requests from the public helped to minimize the impact of these provisions on the workload of administrative staff.

Potential for Harm: Several aspects of open hearings/records with the potential to cause harm were investigated including: (1) instances of extraordinary harm to children and/or parents, (2) media reaction, (3) concerns about the privacy of parents and children, and (4) effects on the number of dependency/neglect cases filed and on the number appealed. Some hypothesized that open hearings/records might have a “dampening” effect on the number of filings of dependency/neglect cases since concern over privacy might inhibit families from seeking assistance from the courts and professionals from making referrals of clients to the courts (if they had concerns for clients’ privacy). On the other hand, an increase in the number of appeals might be the result of problems originating with open hearings/records.

- **Finding:** Open hearings/records have not resulted in documented direct or indirect harm to any parties involved in child protection proceedings, with the possible exception of a sensational case in Hennepin County.
- **Finding:** Evidence indicates that initial media interest in open hearings/records has waned. Regarding the quality of media coverage of child protection cases, professionals with a “case processing”

²²⁴ Includes the judge, county attorney, public defenders and privately retained counsel, social workers, and GALs.

²²⁵ WATCH is a volunteer nonprofit court monitoring and research organization in Hennepin County.

²²⁶ The principal demands were (1) file reorganization, (2) redacting specific information from active case files, (3) new procedures for captioning files, and (4) handling requests from the public for court records.

orientation (court administrators, county attorneys, and judges) were significantly more likely to report that the media had supplied responsible coverage than professionals with a “client-oriented” perspective (GALs, public defenders, and social workers). However, a review of newspaper articles found that media reporting of child protection subjects tends to be dominated by sensational cases, as was the case before open hearings/records. We found no evidence that open hearings/records has exacerbated this tendency, nor were we able to document more than a handful of instances where open hearings/records caused problems for parties to the case.

- **Finding:** Concerns about the privacy of children and parents involved in open hearings/records tend to be primarily associated with public defenders, consistent with the “client-oriented” perspective hypothesized to explain their opinions and attitudes. While the potential for abuse of parent and child privacy in open hearings/records certainly exists, we were unable to document any more than a handful of cases that possibly involved compromises of the privacy of children and families. The lack of participation by the public in open hearings/records has reduced the probability that any harmful consequences for the privacy of children and families would result from open hearings and records.
- **Finding:** Filings of dependency/neglect cases increased in eight of the 12 pilot counties, contrary to the expectations of the “dampening” hypothesis. The decrease in filings in the other counties involved small numbers of cases in each instance. Collectively, these results suggest that open hearings/records had minimal impact on dependency/neglect case filings in the pilot counties. Appeals of TPR cases, which include appeals of CHIPS cases,²²⁷ involved small numbers of cases in each pilot county, making it difficult to discern trends, but they did not increase dramatically in any of the pilot counties as some had suggested they might. Consequently, there is little evidence that open hearings/records had a significant effect on the number of appeals of family cases in the pilot counties.

Public Awareness and Professional Accountability: Changes in professional accountability are difficult to measure since they are based largely on perception. While the survey results suggest professional accountability has changed little as a result of open hearings/records, professionals responding to the second wave of surveys were more likely to feel that accountability had been enhanced than respondents to the first wave, suggesting a movement toward perceptions of greater accountability. In addition, information collected during site visits and in the narrative responses to the surveys show that many professionals felt that professional accountability had been enhanced.

²²⁷ This is a data collection convention employed in Minnesota.

- Finding:** Though according to the survey, most child protection professionals feel that the accountability of the principal actors in the child protection system has not been impacted, we found evidence that suggests that there has been somewhat of an increase in accountability. First, the publication of the WATCH report on open CHIPS cases is evidence of increased scrutiny of child protection proceedings, a necessary first step for securing greater professional accountability. Secondly, narrative comments provided by many of the professionals reflect the perception that accountability has increased, at least for some. Thirdly, increased attendance of extended family members, foster parents, and service providers also worked to increase professional accountability. Fourth, media respondents (to both the mailed and telephone surveys) were significantly more likely to feel that professional accountability (for every category of professional) had increased since open hearings/records had been implemented than any of the other professionals. The latter finding is significant given the critical role that media plays in securing professional accountability (see Figure 6 in Volume I). Additionally, all categories of professionals (including public defenders) responding to the second wave of surveys were more likely to feel that accountability had been enhanced than respondents to the first wave, suggesting a movement toward perceptions of greater accountability.

Overall Impact on Open Hearings/Records: In many ways, the impact of open hearings/records on the child protection system has been limited. The general public has generally declined to participate in open hearings and there have been few public requests for court documents in child protection cases. On the occasions when the public attends an open hearing or requests a document, it usually consists of members of the extended family, foster parents, or service providers interested in a specific case. Open hearings/records initially attracted the attention of the media, but their interest appears to have declined over time. The media continue to focus on sensational child protection cases, providing little coverage of major child protection policy issues, such as the need for additional resources and the availability of services for parents and children. Nonetheless, the media are one of the strongest proponents of open hearings/records in child protection proceedings, since they feel this policy enables them to do a better job of reporting. All things considered, however, the evidence suggests that open hearings/records, to date, have had virtually no effect on general public awareness of child protection issues.

- We were unable to document more than a handful of cases that possibly involved harm to children and families as a result of having their privacy compromised because of open hearings/records. However, many professionals, especially those with a “client oriented” perspective, such as public defenders, maintain that the potential still exists for harm to occur.

- Though according to the survey, most child protection professionals feel that the accountability of the principal actors in the child protection system has not been impacted, we found tentative evidence of some improvements in professional accountability. This evidence comes from: (1) the publication of the WATCH report on open CHIPS cases; (2) narrative comments provided by many of the professionals reflecting the perception that accountability has increased; (3) increased attendance of extended family members, foster parents, and service providers; and (4) media respondents were significantly more likely to feel that professional accountability had increased since open hearings/records had been implemented than any of the other professionals.
- We found little evidence that child protection hearings had changed significantly after having been opened to the public. Open hearings/records have not had much of an effect on court procedures...there is little evidence that the duration of hearings was appreciably affected nor is there compelling evidence that the nature of in-court discussions has changed. Closures of open child protection hearings occurred very infrequently in the pilot counties. In the opinion of the child protection professionals surveyed, opening hearings and records in child protection proceedings to the public has had very little impact on the content of courtroom documents, exhibits, and statements.
- Allowing public access to court records and exhibits from child protection proceedings has had a very significant impact on the workload of court administrative staff because of the record keeping requirements in the court order that established public access and also the need to address public requests for documents. However, requests for court documents from the general public have been rare. Likewise, protective orders restricting public access to court documents and exhibits have been rarely issued and appeals of these orders are even more rare.
- Opinions about the efficacy of open hearings/records in child protection proceedings were divided along professional lines in the second wave of surveys. Public defenders are adamantly opposed to open hearings/records (76 percent), as are large proportions of court administrators (48 percent). On the other hand, the majority of county attorneys (65 percent), GALs (73 percent), and social workers (56 percent) favored open hearings/records. Judges are divided in their opinions, though a large proportion (48 percent) are favorable.
- When survey responses from the single urban county among the pilot counties, Hennepin County, were compared to the responses from the other pilot counties, differences emerged which showed that respondents from Hennepin County were more favorably inclined

toward open hearings/records than their counterparts from other counties.

Concluding Remarks: There are clearly costs attached to open hearings/records, especially for court administrative staff. Other costs may be paid by the parties to child protection cases, especially children and parents (and foster parents) who risk losing privacy.

On the other hand, real and potential benefits result from open hearings/records including enhanced professional accountability, increased public and media attention to child protection issues, increased participation by the extended family, foster parents and service providers in child protection proceedings, and openness of judicial proceedings in a free society. A critical factor that will influence the balance between the costs and benefits of open hearings/records in child protection proceedings will be the amount and type of attention that the public and the media pay to open hearings/records (see Figure 6 in Volume I), given the enhanced public access that results from this policy. To the extent that it is possible, child protection professionals should take the initiative to provide leadership and guidance to the public and the media as they begin to navigate the uncharted waters of open hearings/records.

I. Introduction

On June 22, 1998, Minnesota joined sixteen other states²²⁸ that had opened up some portion of their juvenile protection proceedings and/or records to the public. The opening of child protection hearings and records to the public is a break with the tradition of confidentiality which has long been the hallmark of the juvenile court, but it is consistent with recent efforts to make the juvenile court more accountable for the decisions it renders (Snyder and Sickmund, 1999).

Proponents of opening child protection hearings and records cite the need for openness in a free society, the promise of increased professional accountability, and the need to increase public awareness of child protection issues (Rosario, 1998). Allowing public access to judicial proceedings is regarded by many as a necessary protection for the public against arbitrary courtroom decision-making. Further, by allowing public access to child protection hearings and records, some argue that the accountability of child protection professionals such as social workers, as well as the courtroom work group,²²⁹ will be enhanced since their decisions and recommendations (previously confidential) become subject to public scrutiny. Proponents also argue that open hearings/records should enable the media to provide additional and more responsible coverage of child protection cases and issues and should also contribute to the education of the general public about the operation of the child protection system.

Opponents of open hearings/records cite concerns about possible compromises of the privacy of children and parents (Rosario, 1998). Such compromises might not only embarrass children and parents but could also interfere with therapeutic treatment of parties to the case and could potentially interfere with family reunification efforts.

Children in need of protection or services (CHIPS) cases in juvenile court (including permanent placement, termination of parental rights, and subsequent state ward reviews) were opened to the public in 12 Minnesota counties²³⁰ for a three-year pilot project. The Minnesota Supreme Court Office of the State Court Administrator subsequently contracted with the National Center for State Courts (NCSC) for an evaluation of the Open Juvenile Protection Proceedings Pilot Project primarily focusing on the impact of open hearings on: the welfare of children and families; child protection system professionals; court processes and operations; and public awareness. The purpose of the evaluation was to provide decision-makers with relevant information to assist their deliberations regarding whether open hearings/records should be expanded statewide or whether the project should be terminated. To the best of our knowledge, no other state has conducted an evaluation of open hearings/records in child protection proceedings.

²²⁸ Arizona, Arkansas, Colorado, Florida, Indiana, Iowa, Kansas, Maryland, Michigan, Nebraska, New York, North Carolina, Ohio, Oregon, Texas, and Washington (Szymanski, 1997).

²²⁹ Includes the judge, county attorney, public defenders and privately retained counsel, social workers, and GALs.

²³⁰ Chisago, Clay, Goodhue, Hennepin, Houston, Le Sueur, Marshall, Pennington, Red Lake, Stevens, St. Louis, and Watonwan Counties.

The following report summarizes the key results of the evaluation. After a description of the evaluation methodology, results pertinent to five aspects of open hearings/records are summarized: (1) hearings, (2) records access, (3) potential for harm, (4) public awareness and accountability, and (5) overall impact. The summaries are based on data analyzed and compiled in a companion volume to this report (“Evaluation Data: Open Hearings in Juvenile Protection Matters”²³¹). Finally, concluding remarks are offered.

II. Methodology

The NCSC project team employed a multi-method approach to collect data and information regarding open hearings and records in child protection matters. The data and information collection methods included:

- Site visits, Interviews and Focus Groups
- Two waves of surveys of child protection professionals and the media
- Logbooks, maintained by the courts, recording instances of closed hearings, protective orders, and records requests
- Court case files review
- Compilation of annual data on the number of dependency and neglect filings and appeals of Termination of Parental Rights (TPR) cases
- Compilation of newspaper articles on the subject of open hearings/records in child protection proceedings

Each of the data collection methods and the techniques used to analyze the data are briefly discussed in the following.

Site Visits, Interviews, and Focus Groups: During the summer of 1999, the evaluation team conducted site visits at juvenile courts in each of the 12 pilot counties. While on site, project staff: (1) conducted face-to-face interviews with court personnel (judges, court administrators, and clerks); (2) facilitated focus groups with system stakeholders such as county attorneys, public defenders, social workers, and guardians ad litem (GALs); (3) observed CHIPS and Termination of Parental Rights (TPR) court proceedings; and (4) reviewed CHIPS and TPR court files.

Surveys of Child Protection Professionals and the Media: Survey instruments²³² were designed collaboratively by the National Center for State Courts and the Minnesota Supreme Court, State Court Administration, with input from the Open Hearings Steering Committee for each of the following professional categories: judges/referees, court administrators, county attorneys, public defenders, GALs, social workers, and the news media. The instruments contained a combination of forced choice and free response questions. The instruments were pre-tested using a small group of professionals before they were finalized. The instruments were designed to capture the perceptions of system participants with respect to the impact of open hearings and records on (1) court operations, (2) the quality of court proceedings, (3) the work product of system

²³¹ See Volume II, Evaluation Data.

²³² The survey instruments are found in Volume III, Appendices.

participants, and (4) collaboration among system participants. The NCSC distributed the Round I surveys during June 2000 and Round II surveys during March 2001.

Of the 1,171 surveys in the first wave that were mailed and the 978 distributed, 267 were returned as of June 30, 2000, the specified cutoff date for return. Of the 267 returned surveys, 73 of the respondents answered that they had never participated in a child protection hearing that had been opened to the public and were subsequently eliminated from the analysis. Most of those eliminated were GALs and social workers (78 percent). Consequently the analysis was based on 194 useable surveys.

Of the 1,050 surveys sent out for distribution in the second wave, 458 were returned as of March 31, 2001, the specified cutoff date for return. Of the 458 returned surveys, 123 of the respondents answered that they had never participated in a child protection hearing that had been opened to the public and were subsequently dropped from the analysis. Most of those dropped were GALs and social workers (74 percent). Consequently the analysis was based on 335 useable surveys.

The responses to each question were cross-tabulated with Type of Professional to detect differences in response between the different types of professionals surveyed. A Chi-square statistic was used to test for statistical significance. Since the content of the media survey was much different than the other surveys, a separate analysis was conducted for the responses to this survey. Thematic responses were collected and entered into a separate database.

In response to a disappointing response rate to the mailed media survey, the research staff of the Minnesota Supreme Court developed a modification of the mailed media survey for the purpose of conducting a telephone survey of the media. Supreme Court personnel administered the survey instruments to members of the media via phone during the week of April 23, 2001. A total of 46 completed surveys were forwarded to the NCSC project team. The data were entered into a database and frequencies run for each of the items on the Media Telephone Survey.

Logbooks: As part of the data collection effort, the NCSC project team designed logbooks and requested that the twelve participating counties use them to record information about the occurrence of closed hearings, protective orders and records requests. This information was used to estimate the frequency of occurrence of these activities, to obtain specific information about the activity (e.g., the persons requesting records and the type of document requested), and to identify pertinent cases for the file review.

Court Case File Review: To achieve a more detailed examination of requests for court documents submitted since the implementation of the open records policy, approximately 180 requests were randomly selected from 1,109 record requests that were made between August 1998 and April 2001 in Hennepin County.²³³ Eventually this number was reduced

²³³ Hennepin County was selected as the site for file review because it had by far the largest number of requests for documents, enabling the research team to review the largest number of files in the shortest

to 157 (14.2 percent of the requests) as a result of missing files, incorrect SJIS (State Judicial Information System) numbers, and failure to find information about the documents being requested. This sample size is more than sufficient to insure the generalizability of the results reported herein. Data describing the requester, the document requested, demographics of the child involved in the case, the nature of the allegations in the petition, and information about protective orders related to the case were collected.

Compilation of Annual Data on the Number of Dependency and Neglect Filings and Appeals of Family Cases: It is possible that opening child protection proceedings and court records to the public might influence filing rates of dependency/neglect cases. For example, open hearings/records might have a “dampening” effect on the number of dependency/neglect cases filed, since concern over privacy might inhibit families from seeking assistance from the courts and professionals from making referrals of clients to the courts (if they had concerns for clients’ privacy). An increase in the number of appeals might be the result of problems originating with open hearings/records. Annual data on the number of (1) dependency/neglect case filings and (2) Termination of Parental Rights appeals (which includes appeals of CHIPs cases), by county, were obtained online from Minnesota’s CRIMNET website (<http://www.crimnet.state.mn.us/>). Data from 1996 through 2001 were available. Trends for these two types of cases during this time period were examined.

Compilation of Newspaper Articles: The court services staff of the Minnesota Supreme Court compiled newspaper articles published in the 12 pilot project counties between 1998 and May 2001 on the subject of child protection. These articles were carefully scrutinized by the evaluation team for evidence of (1) the flavor of the media’s handling of child protection cases and issues, (2) sensationalistic coverage of child protection cases, (3) compromises of parent and/or child privacy, and (4) trends over time in the extent of coverage of child protection cases and issues.

III. Results

The impact of open hearings/records in child protection proceedings can be best understood by examining its effect on five critical subject areas: (1) hearings; (2) records access; (3) potential for harm; (4) public awareness and professional accountability; and (5) overall impact. In the following, results pertinent to these five aspects of open hearings/records are summarized²³⁴ in turn. Data from the sources described in the methodology are used in conjunction with one another to make inferences about the effect of open hearings/records on each of these subjects.

amount of time. As will be explained later in the report, we feel that the results of the file review in Hennepin County are, for the most part, generalizable to the other pilot counties.

²³⁴ The summaries are based on data analyzed and compiled in Volume II, “Evaluation Data: Open Hearings in Juvenile Protection Matters”.

1. Effects on Hearings

The opening of hearings in juvenile protection matters to the public had the potential to affect the course of the hearings themselves, if for no other reason than the introduction of new, non-traditional actors to the courtroom. To investigate the impact of open hearings on the conduct and nature of hearings, the following subjects were examined: (1) hearing participants; (2) instances of “closures” in child protection proceedings; (3) effects on the content of court documents (e.g., pleadings, reports, and exhibits); and (4) effects on court procedures and demands on court resources. Much of the data that were used to address these issues were necessarily impressionistic (in the sense that it is derived from the opinions of child protection professionals solicited by means of a survey).

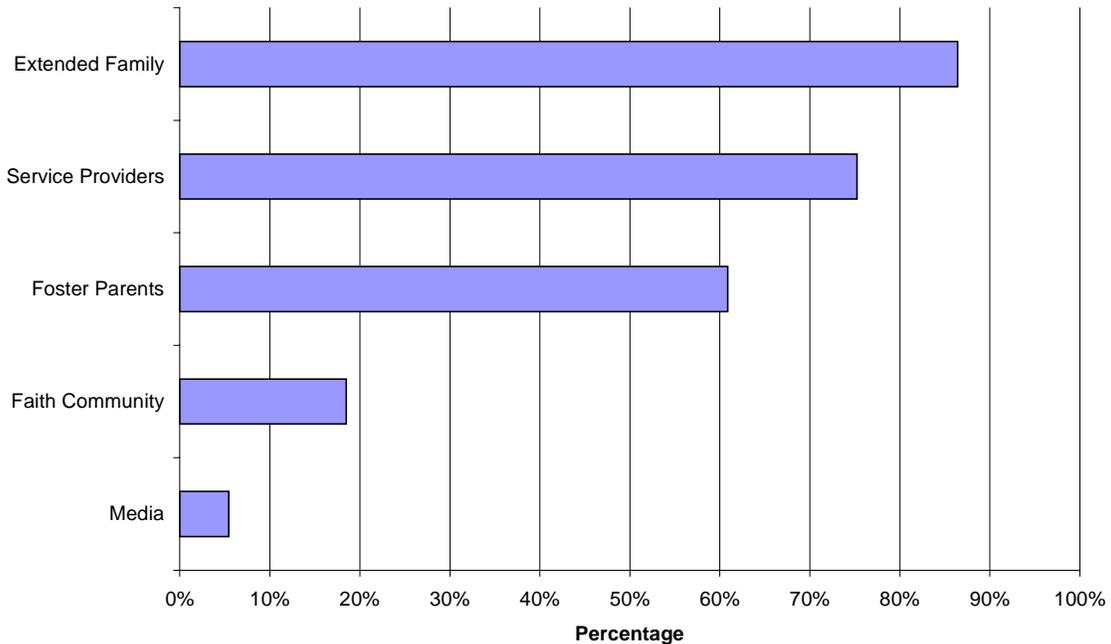
Hearing Participants: Most observers would agree that opening child protection hearings to the public created the possibility that the size and composition of the courtroom audience in these proceedings could change. The majority of respondents to the professional²³⁵ surveys observed an increase in the number of people in the “courtroom audience.” Among those reporting an increase in the size of the courtroom audience, 90 percent reported that the increase was five or fewer individuals per hearing. Though data are insufficient to establish a trend, respondents to the second wave of surveys were more likely to observe an increase in the number of people in the courtroom audience than respondents to the first wave (61 percent vs. 53 percent, respectively).²³⁶ Figure 1 shows the percent of respondents to the second wave of surveys who judged that certain members of the courtroom audience were “always” or “sometimes” present at open child protection hearings. The majority of survey respondents reported that members of the extended family, service providers, and foster parents were “always” or “sometimes” present at open hearings, while representatives from the faith community and the media were reported to be rarely or never present.

²³⁵ Professionals surveyed included judges/referees, county attorneys, court administrators, public defenders, GALs, social workers and the media.

²³⁶ Most respondents to both waves of the survey (about two-thirds in each instance) reported that audience members are “always” or “sometimes” asked by the judge to identify themselves.

Figure 1

Percent of Respondents Reporting that Group was "Always" or "Sometimes" Present at Hearing



- **Finding:** In the opinion of the majority of child protection professionals responding to the survey, open hearings have led to a slight but noticeable increase in attendance at child protection proceedings. The majority of respondents to the professional surveys observed an increase in the number of people in the “courtroom audience.” Among the respondents reporting an increase in the size of the courtroom audience, 90 percent reported that the increase was five or fewer individuals per hearing. Most of the new participants are members of the extended family and foster parents, along with service providers. The data suggest that there may be an ongoing trend toward increased participation by these groups in open hearings.

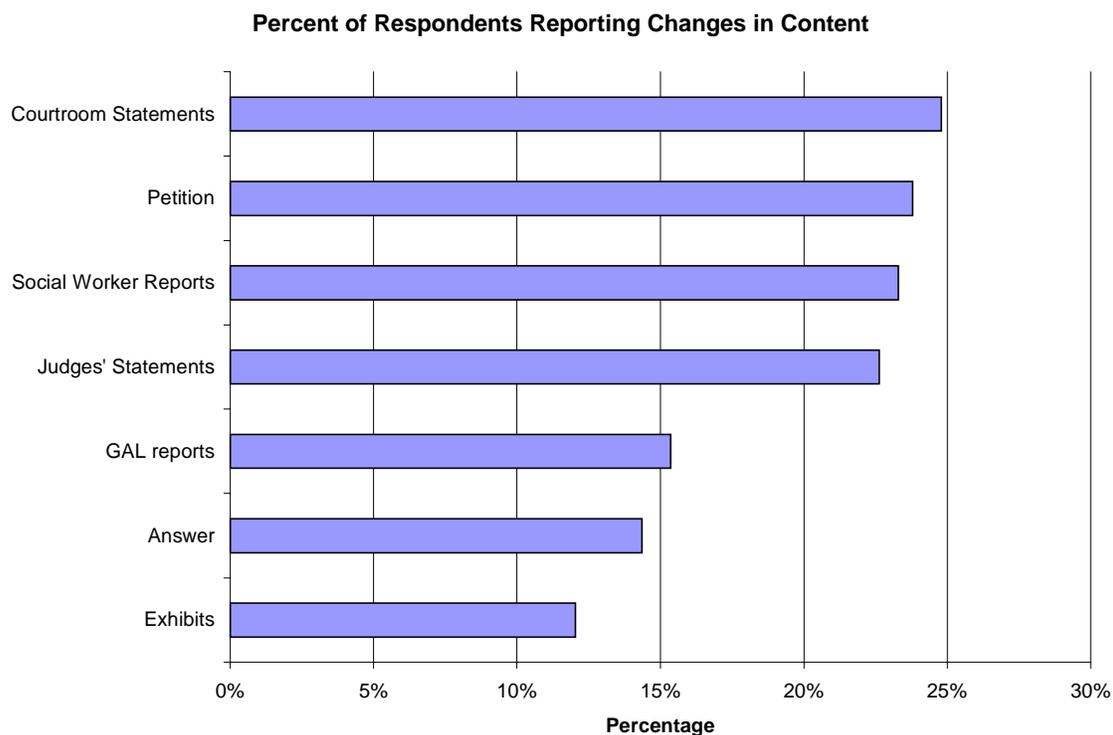
Closures of Open Hearings: While child protection proceedings were opened to the public by court order in the pilot counties, the order also established procedures whereby the proceedings could be closed to the public in exceptional cases. Logbooks maintained by the courts between May 2000 and March 2001 revealed that only six child protection hearings (one in Hennepin and five in Houston Counties) were closed. Data on this subject were not forthcoming from Clay, Goodhue, Marshall, and Red Lake Counties. Data from the surveys indicated, in the opinion of most professionals, that cases involving incest, sexual abuse, parents’ psychological condition, child death, cases where the identity of the child is readily discernable, cases involving HIV, and sensational cases are more likely to be closed than other types of cases. During the site visits, several judges expressed a reluctance to close hearings out of concern for the integrity of the open hearings pilot project. Also mentioned during the site visits (and documented in

newspaper articles) was that public defenders in some counties motioned to close almost all child protection proceedings after the open hearings project was first implemented. These early attempts at “blanket” closures were rebuffed by judges and apparently ceased early on in the project’s life.

- **Finding:** Closures of open child protection hearings occurred very infrequently in the pilot counties.

Content of Court Documents: The professional surveys inquired of respondents whether the content of documents (e.g., pleadings and reports), exhibits, and statements in the courtroom had changed since the advent of open hearings. Such changes could be reflective of changes in professional decision-making and attitudes resulting from opening child protection proceedings and records. Figure 2 below shows that most professionals noted no changes.

Figure 2



Some differences among the professionals were observed. County attorneys were significantly more likely to feel that the content of *petitions* had changed since the implementation of the open hearings/records policy than any other category of professional. Although the majority of all professional categories reported that there has been no change in the content of *exhibits*, judges and county attorneys were significantly more likely than the other professionals to notice such changes. Although the majority of all professional categories reported that there had been no change in the content of *social worker reports* and the differences between professional categories failed to reach statistical significance, large proportions of judges/referees and county attorneys noted

changes. The majority of all professional categories reported that there has been no change in the content of *judges' statements* but county attorneys and public defenders were significantly more likely than the other professionals to report change, in contrast to the first wave of surveys, which reported no significant differences. Narrative responses to these questions show that many feel that the content of statements and documents are generally more accurate since the introduction of open hearings/records, reflecting greater accountability. Others cite instances where documents and reports have been “softened” and/or shortened, leaving out potentially helpful but sensitive information, because of possible public scrutiny. Judges and county attorneys were more likely to notice changes in the content of documents, exhibits, and statements in the courtroom than other child protection professionals presumably because of their more frequent exposure to and greater attention to the content of these, as required by their position and enabled by their legal training.

- **Finding:** In the opinion of the child protection professionals surveyed, the content of courtroom documents, exhibits, and statements has not been significantly affected by open hearings/records. Among the professionals, judges and county attorneys were slightly more likely to observe changes than other professionals. Narrative responses to the survey indicate a division of opinion regarding how documents, exhibits and statements have changed. Some judges and county attorneys report more reticence to include sensitive information (e.g., psychological evaluations, information on sexual assaults) while others report fewer unsubstantiated allegations and timelier, better-prepared court documents.

Effects on Court Procedures and Demands on Court Resources: The advent of open hearings in child protection proceedings created the possibility that court procedures could change in response to this new reality. Survey data were used to examine this possibility and also to determine whether additional resources were required to support the changes in court procedures. Specifically, survey respondents were asked to gauge the impact of open hearings and records in child protection proceedings on (1) the length of hearings, (2) use of court resources, and (3) in-court discussions.

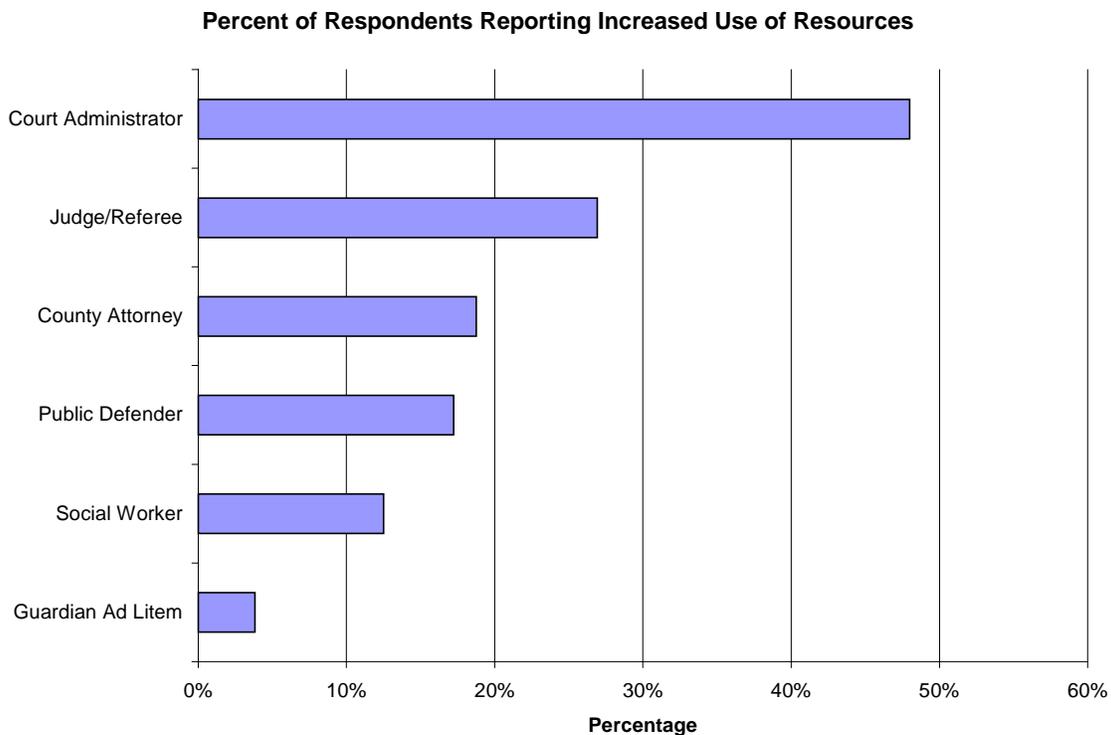
Length of Hearings: More than 90 percent of the survey respondents felt that the length of child protection hearings had not changed in response to their having been opened to the public. However, public defenders were significantly more likely than any of the other professionals to feel that hearings had become longer. Reasons given for longer hearings in the written responses include media presence, spectators who were not parties to the case but who seek to interject themselves into the proceedings, and extra time required for motions to close the proceedings. Others noted that while the length of most hearings is not affected, the effects can be very profound in sensational cases that attract media attention. Two narrative responses from the second wave of surveys, both from county attorneys, aptly summarize the impact of open hearings on the length of hearings:

The length of hearings has not changed at all. Number of persons appearing at hearings since the inception of this rule has changed very, very little.

Depends on the case. Most are not impacted, however, some are significantly impacted. In cases where there is testimony regarding psychological issues regarding children and other classmates of the juvenile may be in the courtroom, the court and attorneys have gone to great lengths to try to protect information from the other potential classmates that may be in the courtroom.

Use of Court Resources: While 81 percent of the survey respondents reported that open hearings/records had not affected the use of court resources, there were some differences among professionals, as shown in Figure 3. Judges and, especially, court administrators were significantly more likely to report an increase in the use of court resources (staff time, court space, etc.) than the other professions. Written responses to this question, along with information collected during the site visits, show that the greatest impact on the resources of professionals occurs with court administrative staff that must now redact documents, separate files, prepare written material to protect the child’s identity, and deal with requests for documents. Public defenders report more of their time is required to prepare clients for open hearings.

Figure 3



The following narrative responses are representative of those provided by many professionals regarding the impact of open hearings/records on court resources. A judge responded as follows:

To the extent that access to files is requested, time is spent responding to the requests. However, the number of requests is so very low that the increased use of resources is minimal.

A county attorney responded as follows:

Again - Most cases the resources are the same. However, there have been cases where a considerable amount of staff time has been used to "protect children" from having sensitive information disclosed in a public forum.

The following two responses from court administrators were typical:

Because of the changes, it takes longer to process cases. Cases are not accessible on TCIS so, when doing calendars, you have to first unconfidentialize (sic) then run calendars and go back in and make them confidential again. Very time consuming. It is also very time consuming if a member of the public wishes to review the file because the file has to be reviewed and redacted.

Initially increased a great deal to split open CHIPS records from closed. Delete status records stored in same physical file. Hired part-time employees for several matters. Significant time spent (40-60 hours) to respond to media requests for copies of all open CHIPS petitions for each of last 2 years. Moderate impact to respond to WATCH²³⁷ requests for file access, provide statistical reports, respond to inquiries from other media and agencies interested in CHIPS cases.

In-Court Discussions: The only information collected that was relevant to this issue is anecdotal from the site visits. Information from the site visit notes suggest that open hearings/records might have had somewhat of a chilling effect on in-court discussions among child protection professionals, at least in some counties (specifically mentioned in Chisago and Hennepin Counties). Several professionals expressed their concern that open hearings/records would tend to increase the number of “in-chambers” discussions among judges, county attorneys, and private attorneys (or public defenders) but we found no evidence to confirm such a trend.

- **Finding:** Open hearings/records have not had much of an effect on court procedures. There is little evidence that the duration of hearings was appreciably affected and there is no compelling evidence that the nature of in-court discussions has changed. There has been a significant impact on the workload of administrative staff resulting

²³⁷ WATCH is a volunteer nonprofit court monitoring and research organization in Hennepin County.

from the record keeping requirements in the court order and the need to address public requests for documents.

2. Records Access

The court order establishing open hearings/records incorporated the presumption that open juvenile protection proceedings are accessible “to any member of the public for inspection, copying, or release.” As a result of the order, records from child protection proceedings in the pilot counties became accessible to the public for the first time since 1911. To investigate the effect of this policy change, several issues were examined, including: (1) the types of documents requested; (2) persons requesting documents; (3) frequency of protective orders and appeals of protective orders; and (4) impact on court administrative practices and resources. Data to address these issues come from the surveys, from logbooks maintained by the courts and from an in-depth file review of Hennepin County cases. Hennepin County reported by far the largest number of document requests among the pilot counties. Because of the large number of cases examined, we feel that we have a good understanding of the types of documents requested in Hennepin County. Based on the information we collected during site visits and from the narrative responses to the survey, we feel that the results about requests for documents from Hennepin County are generalizable to the rest of the state with one exception. It is unlikely that document requests from WATCH occurred as frequently in the other pilot counties as they occurred in Hennepin County.

Types of Documents Requested: Table 1 shows the types of documents requested in Hennepin County between August 1998 and April 2001. Requests for court orders, court orders and petitions, and the entire file predominated (accounting for 69.1 percent of all requests), while requests for petitions and/or motions, progress reports and/or evaluations, and placement orders accounted for another 13.4 percent of the requests. Requests for other types of documents individually accounted for less than 2 percent of the total. There was no systematic pattern to the type of documents requested by individuals outside the courtroom workgroup.²³⁸

²³⁸Includes the judge, county attorney, public defenders and privately retained counsel, social workers, and GALs.

Table 1
Child Protection Document Requests in Hennepin County
August 1998 – April 2001

Type of Document Requested	Frequency	Percent
Order	589	53.1
Court Order and Petition	101	9.1
Case File	76	6.9
Petition and/or Motion	66	6.0
Progress Report and/or Evaluations	53	4.8
Placement Order	29	2.6
Findings	15	1.4
Dismissal	14	1.3
Affidavits	6	0.5
Change of Venue	6	0.5
Affirmation of Service	5	0.5
Placement Order and Petition	5	0.5
Certified Copies	4	0.4
Findings of Fact and Dismissal	4	0.4
Birth Certificate	2	0.2
Exhibit File	2	0.2
Warrant	1	0.1
Undetermined/Other	33	3.0
Missing	98	8.8
Total	1109	100.0

- Finding:** Generally, orders, requests for the entire file, petitions, progress reports, and placement orders were the type of documents most frequently requested in Hennepin County. There was no systematic pattern to the type of documents requested by individuals outside the courtroom workgroup.

Persons Requesting Documents: Table 2 shows the persons requesting documents in Hennepin County between August 1998 and April 2001. Of the 1,109 record requests, 42 were excluded because there was no entry in the logbook describing the person/department making the request. Another 44 of the requesters who did not fit in any of the other categories were classified as “other.” Of the remaining valid 971 entries, the largest percentage – 24.9 percent – of requests were made by social workers. County Attorney’s office and Parental Fee Unit requests followed closely with 21.8 and 18.0 percent, respectively.

Table 2
Persons Requesting Child Protection Documents in Hennepin County
August 1998 – April 2001

Requester	Frequency	Percent
Social Worker	276	24.9
County Attorney	242	21.8
Parental Fee Unit	200	18.0
Department of Children and Family Services	50	4.5
Service Provider	48	4.3
Court Watch	40	3.6
Foster Care	30	2.7
Guardian Ad Litem	26	2.3
Probation	23	2.1
Relative	22	2.0
County Attorney's Office Early Intervention/Prevention Unit	16	1.4
Medical Assistance	13	1.2
Private Attorney	11	1.0
Child Protection	10	0.9
Media	7	0.6
Child Support Officer	3	0.3
Mental Health	3	0.3
Public Defender	3	0.3
Other	44	4.0
Missing	42	3.8
Total	1109	100.0

Relative requests (including those from parents) comprised only 2.0 percent of all document requests, while private attorneys were responsible for another 1.0 percent. Media requests accounted for less than one percent (.6 percent) of all requests. The largest number of requests from outside the courtroom work group were made by WATCH (3.6 percent of all requests made). Despite implementation of open hearings/records, the distribution of the persons requesting documents clearly indicates that the predominant number of requests for documents – 85 percent – continue to originate from within the courtroom work group. Private requests collectively totaled only 7.2 percent of all document requests.

- Finding:** Most requests for documents in Hennepin County continue to originate from within the courtroom workgroup, with requests from others accounting for only about 7 percent of all document requests. WATCH was prominent among the requesters from outside the courtroom workgroup. Because WATCH is less active in the pilot counties outside of Hennepin, document requests by WATCH in these counties can be expected to occur with much less frequency than in Hennepin County. Among the courtroom workgroup, the county attorneys, social workers and the Parental Fee Unit were the principal requesters.

Protective Orders and Appeals: The court order establishing the open hearings project also contained a provision that allowed judges to issue “an order prohibiting public access to juvenile case records that are otherwise accessible to the public when the court finds that there are exceptional circumstances supporting the issuance of the order.” Appeals of these orders were also permitted. To examine the frequency of issuance of such orders and any subsequent appeals, the NCSC evaluation team conducted an in-depth examination of 157 requests (14.2 percent of all requests) randomly selected from the 1,109 record requests made between August 1998 and April 2001 in Hennepin County. Protective orders were issued in three of the cases reviewed (2.5 percent of the total). In one of these cases, a record access appeal was filed and it was denied.

- **Finding:** Protective orders are issued very infrequently and subsequent appeals of these orders occur with even less frequency.

Court Administrative Practices and Resources: The court order establishing open hearings/records contained features that placed demands on the administrative staff of the juvenile court but did not provide these courts with additional resources to satisfy these demands. The principal demands were (1) file reorganization, (2) redacting specific information from active case files, (3) new procedures for captioning files, and (4) handling requests from the public for court records. The two main tasks of file reorganization were (1) separating CHIPS documents from delinquency case documents in active case files and (2) separating CHIPS documents into pre- (not accessible to the public) and post-open hearing sections (generally accessible to the public). According to information collected during site visits, the former task was much more time and labor intensive than the latter task. For example, separating case files into pre- and post-open hearings components was accomplished in Hennepin County by simply placing a pink sheet between documents filed before implementation of open hearing/records and those filed afterwards. Separating CHIPS documents from delinquency case documents was initially a much more daunting task, especially in the larger courts such as in Hennepin County. In the case of Hennepin County, work had already begun on this task prior to open hearings/records (for reasons unrelated to the pilot project) but implementation of the pilot project required substantial acceleration of the pace of work on this task. The work was very labor intensive and required many staff hours and the hiring of a temporary worker to complete. However, this was essentially a one-time only task, and once completed, did not need to be repeated. Further, as cases age, pre-open hearings files and files with pre-open hearings sections will be encountered less frequently.

The court order contained several redacting requirements that had to be satisfied before records could be released to the public. Among the information to be redacted was: (1) identities of reporters of abuse or neglect; (2) the face or other identifying features in a photograph of a child; (3) identity of minor victims of sexual assault (including the victim’s name and address); (4) any reference to HIV test results; and (5) identities of foster parents, foster care institutions, adoptive parents, and any other persons and institutions providing pre-adoptive care of the child. Court administrative staff were tasked with the job of redacting these items of information from any file that was

requested by a member of the public. This could be particularly burdensome when “mass” requests for files were made by groups such as the media and WATCH. During the site visits, and in narrative responses to the surveys, administrative staff frequently expressed concerns about the extra work required to satisfy the redaction requirements but also indicated that once these new procedures were built into their work routines, they were reasonably easy to manage, especially given the small number of requests for records from the public.

New procedures for captioning files required that files opened in a pilot project county after the open hearings/records pilot project was implemented are captioned in the name of the parent(s) or the child’s legal custodian or legal guardian. Previous to the pilot project, these files were usually captioned with the name of the child. Once again, according to information collected during site visits and from narrative responses, the new captioning procedure was initially burdensome but quickly became incorporated into the office routine.

Finally, court administrative staff (clerks) were charged with the responsibility of supplying court documents to the public upon request. Most courts independently developed specific forms to be used by the public to make such requests, requiring an initial investment of staff resources. While “mass” requests from the media and others were burdensome, the public has only infrequently requested court records, somewhat minimizing the impact of this requirement on the work of the court.

- **Finding:** The very real demands made on court administrative staff as a result of open hearings/records appeared to have their greatest impact early after the project commenced and became less of a burden with the passage of time. The small number of records requests from the public helped to minimize the impact of these provisions on the workload of administrative staff.

3. Potential for Harm

Bearing in mind that any change as profound as opening child protection hearings/records to the public has the potential to cause harmful, as well as helpful, effects, several aspects of open hearings/records with the potential to cause harm were identified and investigated. Potentially harmful aspects included: (1) instances of extraordinary harm to children and/or parents, (2) media reaction, (3) concerns about the privacy of parents and children, and (4) effects on the number of dependency/neglect cases filed and on the number of appeals of such cases.

Instances of Extraordinary Harm to Children and/or Parents: The data used to address this issue comes from the professional surveys and a review of newspaper articles published in Minnesota after implementation of the open hearings project (June 22, 1998), collected by Supreme Court staff. One of the most notorious cases occurred in Hennepin County, almost immediately after open hearings/records was implemented. This was a case which had been ongoing for two years prior to open hearings/records,

and which had already received considerable media attention. The case involved a Minnesota woman, formerly of Illinois, whose three children died over a two year period in Chicago during the mid-1980s: an 11-month-old boy who died of heat stroke and 8-month-old twins, whose deaths within 15 minutes of each other were attributed to sudden infant death syndrome. During proceedings in 1998, the deaths of those children were revisited in Hennepin County Juvenile Court as the woman attempted to regain custody of her last-born child, two years old at the time.

The judge closed hearings at the request of an assistant Hennepin County Public Defender, who criticized previous coverage of the case by the Chicago Tribune (as well as the St. Paul Pioneer Press for reprinting the story) as well as a local TV station for trying to interview the mother at her home. At one of the hearings, news crews from two local stations focused their TV cameras – through courthouse windows from the sidewalk outside – on the mother in the case as she walked through the lobby of the Hennepin County Juvenile Justice Center.

The fact that the case was already two years old when hearings were opened complicated the case and contributed to the decision of the judge to close the hearings. None of the documents or evidence from prior proceedings were available to reporters. The judge determined that this inability to understand context meant that reporting of ongoing hearings might produce a distorted view of the provocative case.

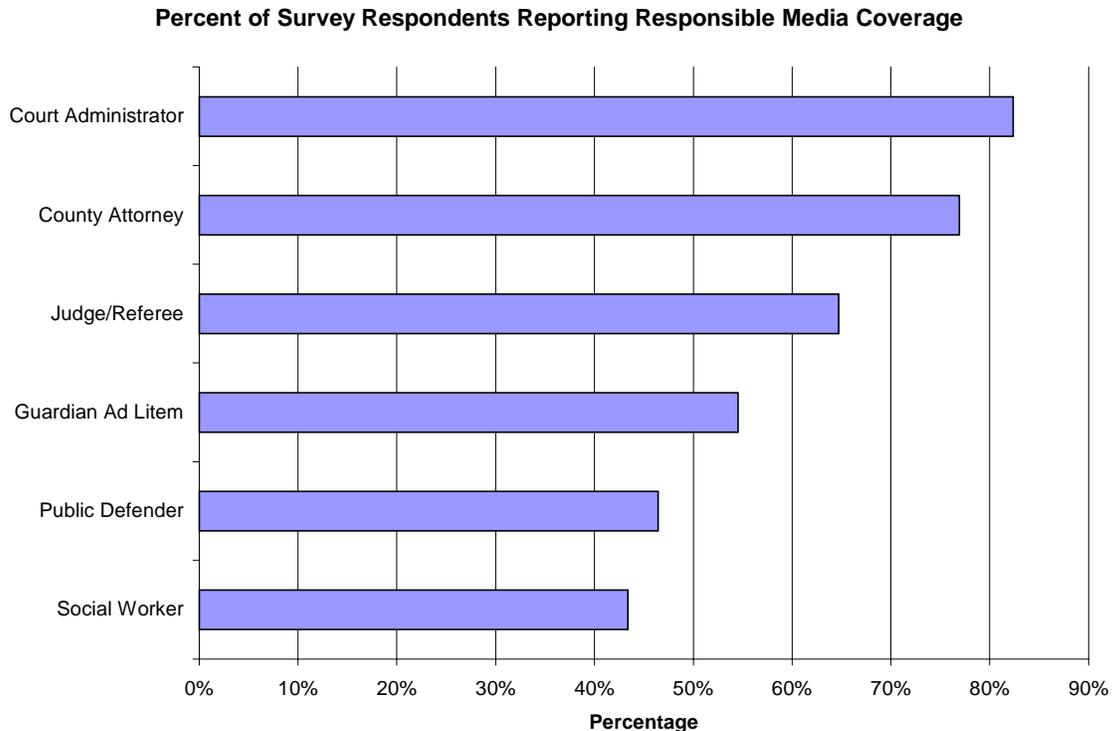
Although this case is an example of the “media frenzy” which many professionals feared, similar examples are difficult to come by. A review of newspaper articles and responses to the survey failed to turn up any other examples of gross irresponsibility on the part of the media in their coverage of open child protection proceedings. Further, we were unable to find other cases where open hearings/records were responsible for harm to any of the parties to the cases.

- **Finding:** Open hearings/records have not resulted in documented direct or indirect harm to any parties involved in child protection proceedings, outside of the sensational case described above.

Media Reaction: The potential exists for the media to exploit open hearings/records to pursue their objective of increased circulation or market share at the expense of the privacy of children and families. Consequently, the professional surveys were used to solicit opinions about how responsibly the media had covered child protection stories since the advent of open hearings/records. To begin with, about 63 percent of the respondents to the second wave of surveys reported that they rarely or never saw news stories about child protection cases, suggesting that the media has largely failed to avail itself of this new opportunity to attend hearings and obtain records in child protection cases. Information collected during the site visits and from narrative responses to the surveys suggest that media attention to child protection cases was high during the period immediately after the implementation of open hearings/records but quickly declined thereafter. When asked whether local media had covered child protection cases

responsibly, the opinions of survey respondents varied according to their professional affiliation as shown in Figure 4.

Figure 4



Court administrators, county attorneys, and judges were significantly more likely to report that the media had supplied responsible coverage than GALs, public defenders, and social workers. One can speculate that the different orientations of these two clusters of child protection professionals toward child protection cases may explain their different perceptions of media coverage. Court administrators, county attorneys, and judges tend to be more oriented toward the orderly processing of large numbers of cases through the justice system. This “case-processing” orientation contrasts with the more individualized, client-oriented justice approach associated with defense attorneys (including public defenders), GALs, and social workers. Perhaps professionals with the case-processing orientation feel that the potential benefits to the child protection system resulting from media coverage of open hearings/records (e.g., increased public attention to child protection matters and greater accountability of child protection system professionals) outweigh any isolated instances of individual harm caused by media coverage. To those professionals with a more client-oriented approach to child protection cases, the potential benefits that the child protection system might accrue from media coverage of open hearings seem outweighed by the potential for harm to individual children and families.

Based on responses to both the mailed and telephone surveys from the media and from a review of newspaper articles about child protection cases, it appears that there may have been a very few isolated instances where photographs, and names and addresses of

children and parents have been published. For example, three respondents (about 7 percent of the total) to the telephone survey of the media indicated that their media organization had published the image/photo of a child involved in a child protection proceeding, three respondents reported that their media organization had published the name of a child involved in a child protection proceeding, 16 respondents (about 35 percent) indicated that their media organization had published the name of a parent involved in a child protection proceeding, while 5 respondents (about 11 percent) indicated that their media organization had published the address of a child or parent involved in a child protection proceeding. It is important to keep in mind that the names of parents are not subject to confidentiality requirements of child protection proceedings if there is an accompanying criminal case. In our review of newspaper articles, we found only one case where the names of children and parents were given and there apparently was not an accompanying criminal case.

The review of newspaper articles found evidence of ongoing media infatuation with sensationalistic child protection cases, frequently involving the death or severe abuse and torture of children. This was certainly true before the implementation of open hearings/records and we found no evidence that open hearings/records in any way exacerbated this tendency on the part of the media. Media coverage of sensationalistic child protection proceedings can be problematic for several reasons. First, the privacy of parties involved in such child protection proceedings may be seriously compromised. Secondly, by focusing attention on the “horror” stories in the child protection system, the media distracts from and pays little heed to the many successes of child protection professionals, risking the creation of a seriously distorted public image of how the child protection system operates. Unfortunately, distorted public images can lead to the formation of dubious public policy.

- **Finding:** Evidence indicates that initial media interest in open hearings/records has waned. Regarding the quality of media coverage of child protection cases, professionals with a “case processing” orientation (court administrators, county attorneys, and judges) were significantly more likely to report that the media had supplied responsible coverage than professionals with a “client-oriented” perspective (GALs, public defenders, and social workers). However, a review of newspaper articles found that media reporting of child protection subjects tends to be dominated by sensational cases, as was the case before open hearings/records. We found no evidence that open hearings/records has exacerbated this tendency, nor were we able to document more than a handful of instances where open hearings/records caused problems for parties to the case.

Concerns About the Privacy of Parents and Children: Several respondents to the surveys repeatedly expressed concerns that open hearings/records compromised the privacy of children and parents. To some, identifying parents and children in the media is never acceptable under any circumstances. Although some members of every professional category expressed these sentiments, they were particularly apt to originate

from public defenders. Narrative survey responses by public defenders that capture this concern follow:

Client (child) confidentiality. These children, for no reason having anything to do with anything they've done wrong, are in the court system and matters critical to their well being must be discussed. I see little benefit in opening these hearings to the public.

Child protection cases are for the protection of the child. Additional opportunity for open access increases the chances to stigmatize the child; thwart rehabilitative efforts. If you want "accountability" this is NOT the answer.

These are private family matters for which due process is provided. Public knowledge or the threat of it can be very damaging to fragile families trying to put their lives back together. The public has no business knowing the specifics of these cases.

The expression of such sentiments by public defenders is consistent with the “client-oriented” perspective. Because public defenders tend to assume this orientation, it is not surprising that they would express concern about the privacy of individual children and families, regardless of what benefits might accrue from open hearings/records in child protection proceedings.

Though the potential for compromises of the privacy of children and parents by open hearings/records is undeniable, lack of participation by the public in open hearings/records reduces their probability. Further, we were unable to document any more than a handful of cases that possibly involved compromises of the privacy of children and families involved in child protection proceedings during our review of newspaper articles and from the responses to the professionals survey.

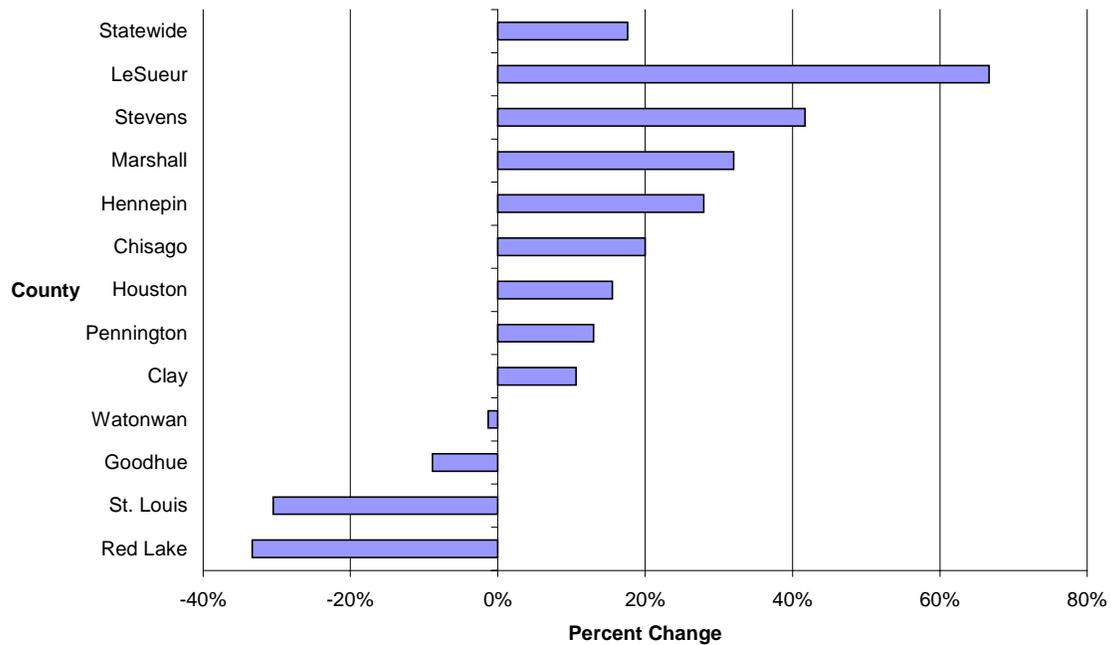
- **Finding:** Concerns about the privacy of children and parents involved in open hearings/records tend to be primarily associated with public defenders, consistent with the “client-oriented” perspective hypothesized to explain their opinions and attitudes. While the potential for abuse of parent and child privacy in open hearings/records certainly exists, we were unable to document any more than a handful of cases that possibly involved compromises of the privacy of children and families. The lack of participation by the public in open hearings/records has reduced the probability that any harmful consequences for the privacy of children and families would result from open hearings and records.

Effect on the Number of Dependency/Neglect Cases Filed and the Number Appealed: Some hypothesized that open hearings/records might have a “dampening” effect on the number of filings of dependency/neglect cases since concern over privacy might inhibit families from seeking assistance from the courts and professionals from making referrals of clients to the courts (if they had concerns for clients’ privacy). This

possible effect does not appear to have materialized. Figure 5 gives the percentage change in dependency/neglect filings when the number of filings for the first two full years after open hearings/records (1999 and 2000) were compared to the number for the last two full years prior to open hearings/records (1996 and 1997). It can be seen that filings increased in eight of the 12 pilot counties. There was a very slight decrease in Watonwan County, and more substantial percentage decreases in three other counties.

Figure 5

Percent Change in Dependency/Neglect Filings, 1999 and 2000 Compared to 1996 and 1997



Figures A through T in Volume 2, *Evaluation Data: Open Hearings and Court Records in Juvenile Protection Matters* Section II(A) provide the number of dependency/neglect filings for 1996 – 2001²³⁹ for each county participating in the pilot project. For purposes of comparison, the number of dependency/neglect filings for the State Judicial District containing the county (-ies) in question is also presented. The filings for the pilot counties were removed from the totals for each district, to permit a more unbiased comparison. Large differences in the trend of dependency/neglect cases filed between the pilot counties and the other counties in their respective districts could be the result of the impact of open hearings/records.

In the First District, when filings from 1996 and 1997 are compared to filings from 1999 and 2000, Goodhue County registered a slight decrease in dependency/neglect filings (9 percent) and filings in LeSueur County increased substantially (67 percent), while the trend in filings for the rest of the counties in the district was relatively flat (5 percent

²³⁹ The figure for 2001 is a 12-month rolling total, current through May 2001. The totals for the other years are based on calendar years. Consequently, the total number of filings for 2001 is not strictly comparable to the totals for the other years.

increase). In the Third District, dependency/neglect filings for Houston County increased (16 percent) while the other counties in the district displayed an almost flat trend (2 percent increase). Watonwan County in the Fifth District displayed a nearly flat trend in filings (1 percent decrease), while the rest of the counties in that district displayed a slightly decreasing trend (7 percent decrease). Filings in St. Louis County and in the rest of the counties in the Sixth District displayed decreasing trends, 31 percent and 12 percent, respectively. In the Seventh District, Clay County and the rest of the counties in the district displayed slightly increasing trends in filings, 11 percent and 6 percent, respectively. Filings in Stevens County increased substantially, 42 percent, but were almost flat in the rest of the counties in the Eighth District (.8 percent decrease). Filings after 1998 in Marshall and Pennington Counties showed similar, increasing trends (32 and 13 percent, respectively) as did the rest of the counties in the Ninth District (12 percent increase), with the exception of Red Lake County, which showed a decreasing trend (33 percent decrease but the number of filings in Red Lake County was small). Finally, it can be seen that Hennepin County displayed increasing trends of dependency/neglect case filings, similar to Ramsey County and the other urban counties in Minnesota (Anoka, Carver, Dakota, Scott, and Washington). Thus, contrary to the expectation of some that dependency/neglect filings would decrease in the pilot counties, they increased in eight of the twelve counties. In one county, Watonwan, there was almost no change. In the other three counties, decreases were more substantial although the numbers of filings in one of these, Red Lake County, was very small. Collectively, these results provide no indication of a strong, consistent impact of open hearings/records on filings of dependency/neglect case filings since filings increased in some pilot counties while they decreased in others.²⁴⁰

The number of appeals of Termination of Parental Rights (TPR) cases, which include appeals of CHIPS cases,²⁴¹ in the Court of Appeals was also examined. An increase in the number of appeals might be the result of problems originating with open hearings/records. As can be seen in Table 3 below, the number of appeals from most counties was small, which makes trends more difficult to discern. There does not appear to be a strong and consistent trend for appeals to have increased since open hearings/records has been implemented.

²⁴⁰Even if there were a strong consistent trend in filings of dependency/neglect cases in the pilot counties, it would not be possible to tell with any degree of certainty whether the changes in dependency/neglect filings were the result of open hearings/records or some other phenomenon, such as population growth, changes in local filing practices, or some other change occurring among the counties, without gathering additional information.

²⁴¹ This is a data collection convention employed in Minnesota.

Table 3

Number of TPR and CHIPS Case Appeals in Pilot Counties, 1996 - 2000

County	Year				
	1996	1997	1998	1999	2000
Chisago	0	1	1	0	1
Clay	0	1	1	2	0
Goodhue	0	0	0	0	2
Hennepin	6	10	9	5	12
Houston	0	0	0	0	0
LeSueur	0	0	0	0	0
Marshall	0	0	0	0	0
Pennington	0	0	0	0	0
Red Lake	0	0	0	0	0
St. Louis	0	0	1	0	1
Stevens	0	0	0	0	0
Watonwan	0	0	0	0	0

- **Finding:** Filings of dependency/neglect cases increased in eight of the 12 pilot counties, contrary to the expectations of the “dampening” hypothesis. The decrease in filings in the other counties involved small numbers of cases in each instance. Collectively, these results suggest that open hearings/records had minimal impact on dependency /neglect case filings in the pilot counties. Appeals of TPR and CHIPS cases involved small numbers of cases in each pilot county, making it difficult to discern trends, but they did not increase dramatically in any of the pilot counties as some had suggested they might. Consequently, there is little evidence that open hearings/records had a significant effect on the number of appeals of TPR and CHIPS cases in the pilot counties.

4. Public Awareness and Professional Accountability

Figure 6 presents a hypothesis of how open hearings/records might ultimately lead to increased accountability of child protection professionals and to a garnering of additional resources for the child protection system. This representation is based on inferences made by NCSC evaluators on the basis of information obtained from site visits, interviews, and focus groups. Clearly many of the professionals we encountered subscribed to this hypothesis. For example, in the Advisory Committee comments accompanying the order promulgating the rule on public access to records relating to open juvenile protection proceedings (C2-95-1476), it was stated (p.5) that:

The advisory committee is of the opinion that public access to reports and recommendations of social workers and guardians ad litem, which become case records, is an integral component of the increased accountability that underlies the pilot project.

It is hypothesized that the policy of open hearings and records will lead to increased public and media attention to the child protection system. Two possible benefits are posited to result from the increased attention to the child protection system: (1) increased accountability of system agencies and professionals and (2) increased public interest and awareness of child protection issues and the need for augmented system resources (e.g., staff, training, funding for additional programming). These two benefits will ultimately lead to improved performance of the child protection system and improved outcomes for children and families.

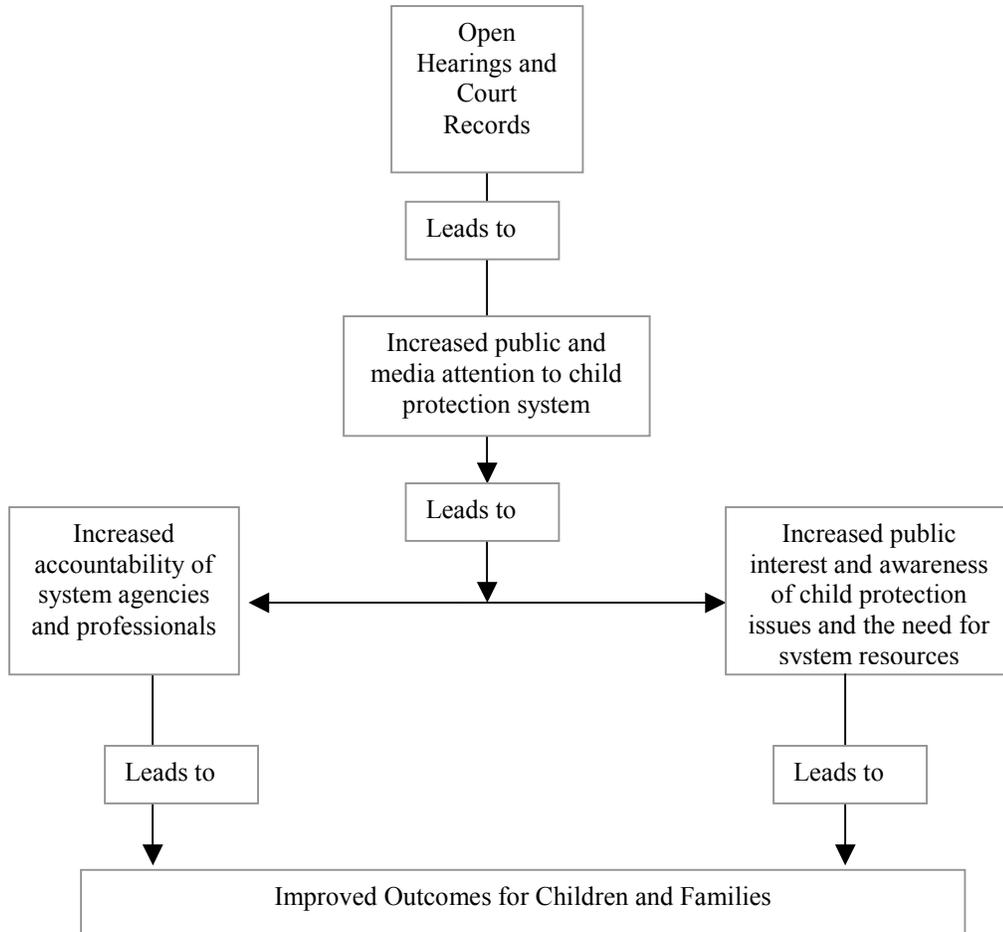
This representation suggests that the key to improved system performance is through both increased public and media attention to the child protection system. Media attention is especially important for bringing about reform on a large, statewide scale. Court watching and reporting organizations such as WATCH are also important to this process.

We can distinguish between two types of “public.” On the one hand, there is the “general public” with no personal stake in the child protection system and whose impressions of the child protection system are formed principally by the media. There was never an expectation that the “general public” would avail themselves of open hearings/records. On the other hand, there is an “interested public” who have stakes in the child protection system such as members of the extended families of those involved in child protection proceedings, foster parents, and service providers. Attention by the interested public is important for local reform and innovation, and could ultimately contribute to a “grassroots” campaign for changes in the child protection system. Both the media and the interested public are key to increasing professional accountability along with public interest and awareness of child protection issues. Advocates of open hearings/records should focus their attention on these two groups.

There are problems with the roles ascribed to both the media and organizations like WATCH for mobilizing public opinion. The problem with the role of the media in this hypothesis is their ongoing infatuation with sensationalistic child protection cases at the expense of their coverage of the broader issues of child protection, which is generally limited. WATCH, on the other hand, has clearly taken advantage of open hearings/records to improve their monitoring of child protection cases, having recently released a report on the subject. However, our review of record requests showed that WATCH accounted for only three to six percent of the records requested in Hennepin County between August 1998 and April 2001 and, outside of Hennepin County, WATCH seems to have little presence. Thus, it would appear that the role of organizations such as WATCH for drawing public attention to child protection issues will be limited by their relatively small size and limited resources.

Figure 6

Hypothesis of Improved Child Protection System Performance Resulting from Open Hearings and Records



There are also problems with the role ascribed to the public for mobilizing public opinion about child protection issues. Participation by the interested public in open hearings/records has definitely increased since its implementation but this group has yet to coalesce into an effective voice for reform of the child protection system.

Survey results disclosed that most professionals did not feel that the professional accountability of judges, county attorneys, court administrators, public defenders, GALs, or social workers had changed as a result of open hearings/records. Interestingly, all professionals reported enhanced professional accountability when the results from the second wave of surveys were compared to the results from the first wave of surveys. Media respondents from both the mailed and telephone surveys were much more likely than other respondents to feel that professional accountability had been enhanced, which is significant given the media's importance for insuring professional accountability. Indeed, the media (as reported in the mailed and telephone surveys) enthusiastically supports open hearings/records and feels that it has allowed them to do a better job

reporting child protection cases and issues. The following response from a member of the media to the second wave of surveys is indicative of this position:

There has definitely been increased attention to child protection issues and policies. Recently, there has been a lot of coverage in the media about the lack of guardians ad litem for the majority of child protection cases across the state. Increased funding is currently being sought and efforts to encourage volunteerism in this area as well. WATCH has written an article about the need for more attention to children and the services they are provided in our newsletter. This article resulted in conversations and meetings with child protection system professions. We (and the Star Tribune) have also written about the impact of new permanency timelines.

While the survey results suggest professional accountability has changed little as a result of open hearings/records, professionals responding to the second wave of surveys were more likely to feel that accountability had been enhanced than respondents to the first wave, suggesting a movement toward perceptions of greater accountability. In addition, information collected during site visits and in the narrative responses to the surveys show that many professionals felt that professional accountability had been enhanced. Some examples of these narrative responses follow:

From a judge: The prospect or potential of having more eyes watching and people scrutinizing the legal process of all individuals circled as having increased accountability, results in greater accountability.

From a county attorney: The decisions of the court and on occasion the county attorney are under greater scrutiny. Decisions to remove or reunify, in particular, are weighed more carefully.

From a court administrator: The county attorney and court administration are more accountable as far as content of the petition and attachments and scheduling of cases timely.

From public defenders: All of this works to make a heretofore system that used confidentiality to cloak incompetence or negligence much more accountable and focused on positive nurturing plans to help families and children with all parties held to an increasing standard of due care.

Judges actually read the file before the hearing and the lawyers (for county) for child, for parents are prepared.

From a GAL: Parties appear more sensitive to claim that they failed to perform duties and obligations. Not much more sensitive, but some.

From social workers: I need to keep up to date on my contact with the child and parents, keep accurate documentation, stay up to date on case plans and reports, following time lines, as well.

When reporters, etc. appear, all seem more open to other suggestions.

Social workers more attuned to accurate, detailed, and documented information. GALs must be more thorough. Service providers more involved with court proceedings to document what they are or have done for the client.

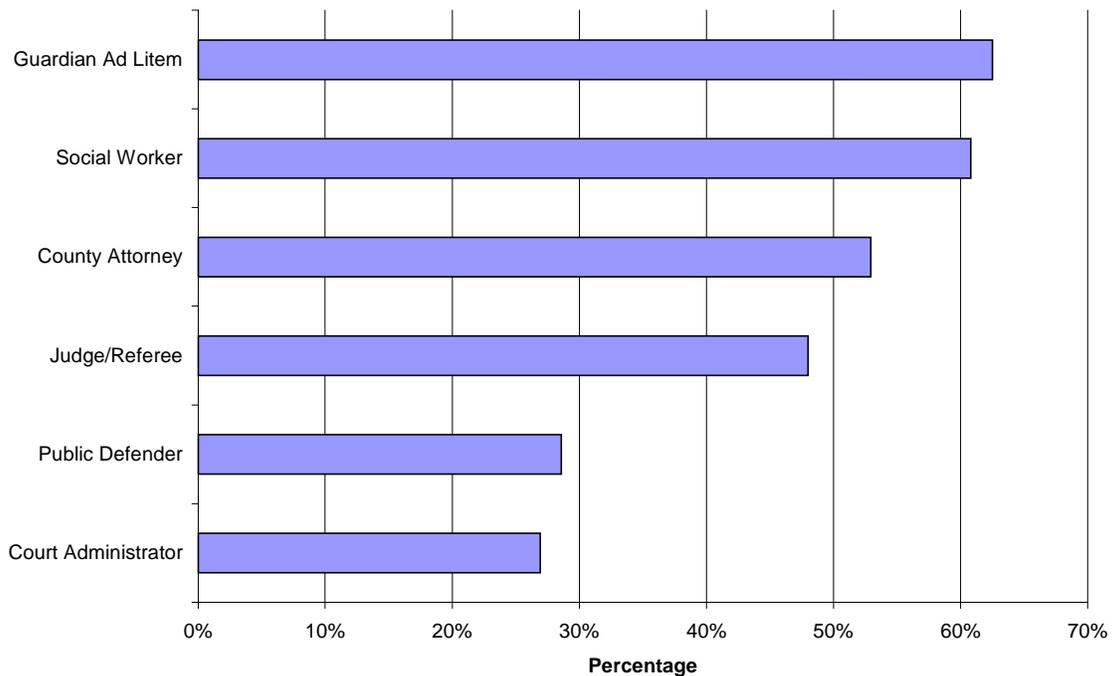
Additional evidence of enhanced professional accountability comes from the recently published (May 23, 2001) report by WATCH, "WATCH's Monitoring of Open CHIPS Cases in Hennepin County Juvenile Court." Much of the information collected by WATCH would not have been accessible prior to open hearings/records. The WATCH report contains many useful recommendations and is an example of the type of scrutiny to which child protection professionals may be subjected in the future. WATCH feels that open hearings/records has enabled them to do a better job of monitoring child protection cases, as reflected in their narrative response to the first wave of surveys:

Though WATCH is not a media organization, with the increased information about children in need of protection or services (CHIPS) cases obtained from our court monitoring and research, we are now more able to report on child protection issues and policies. We are also more able to identify problem areas and make suggestions for improvements. For example, we have pointed out the need for juvenile court personnel on the dynamics of domestic violence and for addressing the frequent delays encountered by participants in hearings and interested observers. We intend to write a comprehensive report on all our observations/suggestions by February 2001. Recognizing that some child protection departments in the state are short on funds, it becomes even more important for the public to have information about how the system operates and the types of cases it oversees.

As shown in the accountability hypothesis (Figure 6), public awareness has a role in improving the accountability of child protection professionals. However, professional opinion about whether greater efforts should be made to inform the public about open hearings/records is divided, as shown in Figure 7.

Figure 7

Percent Favoring Increasing Public Awareness of Open Hearings/Records



More than half of the GALs, social workers, and county attorneys, respectively, and almost half of the judges were in favor of increasing public awareness of open hearings/records. Only 29 percent of the public defenders and 27 percent of the court administrators were in favor of increasing public awareness. Based on the narrative comments and site visit notes, it appears that social workers and GALs welcome the lifting of the traditional veil of secrecy that has prevented them from sharing their work with the public. The following comment from a social worker captures this sentiment:

I would like the public to have a greater understanding of the system and the difficult role child protection social workers have. Most people have a very unrealistic picture. Most, if they knew, would support the system and the social workers more. We have a bad PR rep.

The responses of the public defenders and county attorneys are consistent with their respective “case-processing” and “client-oriented” perspectives on the treatment of child protection cases. We speculate that county attorneys feel that the benefits to the child protection system resulting from open hearings/records outweigh any isolated instances of harm to individuals. Public defenders are opposed to any policy that could potentially harm their clients. Court administrators oppose increasing public awareness of open hearings/records presumably because of the additional work this initiative might bring to their staffs (without providing them with additional resources). The following response from a court administrator captures this sentiment:

Opening hearings to the public has only caused more time and effort for court administration personnel. When we didn't have to worry about what remained confidential in a file, it alleviated the time spent checking and re-checking a file to make sure everything was redacted that needed to be.

Interestingly, even though judges were more likely to respond that they wanted child protection hearings and records open to the public than not open, a slight majority was in favor of not increasing efforts to inform the public of this policy. Similarly, even though almost two-thirds of the county attorneys were in favor of open hearings/records, only slightly more than half of this group was in favor of increasing efforts to inform the public of this policy. While 52 percent of the court administrators were either in favor of open hearings/records or had no opinion, 73 percent were against increasing efforts to inform the public of this policy. Thus while judges and county attorneys are generally in favor of open hearings/records, they share the reluctance of court administrators to increase efforts to educate the public about the policy.

- **Finding:** Though according to the survey, most child protection professionals feel that the accountability of the principal actors in the child protection system has not been impacted, we found evidence that suggests that there has been somewhat of an increase in accountability. First, the publication of the WATCH report on open CHIPS cases is evidence of increased scrutiny of child protection proceedings, a necessary first step for securing greater professional accountability. Secondly, narrative comments provided by many of the professionals reflect the perception that accountability has increased, at least for some. Thirdly, increased attendance of extended family members, foster parents, and service providers also worked to increase professional accountability. Fourth, media respondents (to both the mailed and telephone surveys) were significantly more likely to feel that professional accountability (for every category of professional) had increased since open hearings/records had been implemented than any of the other professionals. The latter finding is significant given the critical role that media plays in securing professional accountability (see Figure 6 in Volume I). Additionally, all categories of professionals (including public defenders) responding to the second wave of surveys were more likely to feel that accountability had been enhanced than respondents to the first wave, suggesting a movement toward perceptions of greater accountability.

As suggested by the accountability hypothesis (shown in Figure 6), responsible and sustained reporting of child protection issues by the media, scrutiny of the child protection system by court watch groups such as WATCH, and increased public awareness of open hearings/records and child protection issues in general are the keys to improving the accountability of child protection system professionals. Until the participation of these groups in the child protection system

increases, the accountability hypothesis will not receive a fair test. Given the reluctance of many child protection professionals to publicize open hearings/records, any efforts to publicize should be carefully crafted and designed to educate the public about child protection issues.

5. Overall Impact on Open Hearings/Records

In many ways, the impact of open hearings/records on the child protection system has been limited. The general public has generally declined to participate in open hearings and there have been few public requests for court documents in child protection cases. On the occasions that the public attends an open hearing or requests a document, it usually consists of members of the extended family, foster parents, or service providers interested in a specific case. Open hearings/records initially attracted the attention of the media, but their interest appears to have declined over time. The media continue to focus on sensational child protection cases, providing little coverage of major child protection policy issues, such as the need for additional resources and the availability of services for parents and children. Nonetheless, the media are one of the strongest proponents of open hearings/records in child protection proceedings, since they feel this policy enables them to do a better job of reporting. All things considered, however, the evidence suggests that open hearings/records, to date, have had virtually no effect on general public awareness of child protection issues.

We were unable to document more than a handful of cases that possibly involved harm to children and families as a result of having their privacy compromised because of open hearings/records. The lack of participation by the public in open hearings/records has reduced the probability that any harmful consequences for the privacy of children and families would result from open hearings and records. However, many professionals, especially those with a “client-oriented” perspective, such as public defenders, maintain that the potential still exists for harm to occur.

Though according to the survey, most child protection professionals feel that the accountability of the principal actors in the child protection system has not been impacted, we found tentative evidence of some improvements in professional accountability. The publication of the WATCH report on open CHIPS cases and the narrative comments from many of the professionals are evidence that accountability has been increased, at least for some professionals. Increased participation by the “interested public” (including extended family members, foster parents, and service providers) is also a very important and positive trend that acts to increase professional accountability. It is also notable that media respondents were significantly more likely than any of the other professionals to feel that professional accountability (for every category of professional) had increased since open hearings/records had been implemented, given the critical role that media plays in securing professional accountability (see Figure 6 in Volume I). Additionally, professionals responding to the second wave of surveys were more likely to feel that accountability had been enhanced than respondents to the first wave, suggesting a movement toward perceptions of greater accountability.

We found little evidence that child protection hearings had changed significantly after having been opened to the public. Open hearings/records have not had much of an effect on court procedures...there is little evidence that the duration of hearings was appreciably affected nor is there compelling evidence that the nature of in-court discussions has changed. Closures of open child protection hearings occurred very infrequently in the pilot counties. In the opinion of the child protection professionals surveyed, opening hearings and records in child protection proceedings to the public has had very little impact on the content of courtroom documents, exhibits, and statements.

Allowing public access to court records and exhibits from child protection proceedings has had a very significant impact on the workload of court administrative staff because of the record keeping requirements in the court order that established public access and also the need to address public requests for documents. However, requests for court documents from the public have been rare. Likewise, protective orders restricting public access to court documents and exhibits have been rarely issued and appeals of these orders are even more rare.

Opinions about the efficacy of open hearings/records in child protection proceedings were divided along professional lines in the second wave of surveys. Public defenders are adamantly opposed to open hearings/records (76 percent), as are large proportions of court administrators (48 percent). On the other hand, the majority of county attorneys (65 percent), GALs (73 percent), and social workers (56 percent) favored open hearings/records. Judges are divided in their opinions, though a large proportion (48 percent) are favorable. Professionals in favor cite increased professional accountability, real and potential, and the general need for openness in all public matters in a free society. Those opposed cite concern about the privacy of children and families. As a trend, responses across all professional categories, including public defenders, from the second wave of surveys were more favorable to an open hearings/records policy in child protection proceedings than those from the first wave.

There are several possible explanations of the differences in opinion among the professionals about opening hearings and records in child protection cases to the public. It is hypothesized that court administrators tend to oppose open hearings/records because of the additional work that is required from their offices without (to date) additional resources (principally staff). Based on the narrative comments and site visit notes, it appears that social workers and GALs are favorably disposed toward open hearings/records because they welcome the lifting of the traditional veil of secrecy that has prevented them from being able to explain their decisions and recommendations to the public. Court administrators and judges tend to be oriented toward the orderly processing of large numbers of cases through the justice system. This "case-processing" orientation contrasts with the more individualized, client-oriented justice approach associated with defense attorneys, including public defenders. Perhaps professionals with the case-processing orientation feel that the potential benefits of open hearings/records (e.g., increased public attention to child protection matters and greater accountability of child protection system professionals) outweigh any isolated instances of individual harm

caused by this policy. To those professionals with a more client-oriented approach to child protection cases, the potential benefits that the child protection system might accrue from open hearings seem outweighed by the potential for harm to individual children and families.

When survey responses from the single urban county among the pilot counties, Hennepin County, were compared to the responses from the other pilot counties, differences emerged which showed that respondents from Hennepin County were more favorably inclined toward open hearings/records than their counterparts from other counties. Across all professional categories, respondents from Hennepin County were more likely to favor making child protection hearings and records accessible to the public, to feel that the quality of child protection hearings had improved since open hearings had been implemented, were more likely to feel that the accountability of (every type of) child protection professional had increased, and were more likely to favor increasing efforts to inform the general public about open hearings/records than their counterparts from other counties. These differences may reflect that open hearings/records has had a more significant impact on the child protection system in Hennepin County than in the other counties. Perhaps the closer proximity of major media outlets, the nearby presence of WATCH, and a more organized child protection community or lobby in Hennepin County than in the other counties created an atmosphere more conducive to the fulfillment of the accountability hypothesis (Figure 6) in Hennepin than in the other counties. There may also be a threshold effect associated with open hearings/records such that the size of the child protection caseload in a county must be sufficiently large to enable open hearings/records to have an impact.

It is also possible that the differences between Hennepin and the other counties are due more to perceptions than to actual program effects. Child protection professionals in Hennepin County deal with much larger child protection caseloads than their counterparts in other counties and consequently have many more opportunities to observe the impact of open hearings/records than their counterparts. Media stories about child protection cases are also more frequent in a large metropolitan area such as Hennepin County, helping to keep open hearings/records on the minds of child protection professionals. The child protection system in Hennepin has frequently been the focus of media attention and criticism. Child protection professionals in Hennepin may welcome open hearings/records as a means to blunt such criticism. It may also be the case that the “case-processing” orientation is more pervasive in Hennepin County, across all professional types, than in the other counties because the size of Hennepin’s caseload requires orderly movement of large numbers of child protection cases. As we hypothesized earlier, professionals with a “case-processing” orientation tend to be more favorably inclined toward open hearings/records than professionals with a “client-oriented” orientation.

IV. Concluding Remarks

There are clearly costs attached to open hearings/records, especially for court administrative staff. Other costs may be borne by the parties to child protection cases, especially children and parents (and foster parents), who risk losing privacy. During the course of the data collection, the NCSC project team did not encounter any cases where harm to children or parents irrefutably resulted from open hearings/records although many professionals expressed concern for the potential of such harm.

On the other hand, real and potential benefits result from open hearings/records, including enhanced professional accountability, increased public and media attention to child protection issues, and openness of judicial proceedings in a free society. A critical factor that will influence the balance between the costs and benefits of open hearings/records in child protection proceedings will be the amount and type of attention that the public and the media pay to open hearings/records (see Figure 6), given the enhanced public access that results from this policy. To the extent that it is possible, child protection professionals should take the initiative to provide leadership and guidance to the public and the media as they begin to navigate the uncharted waters of open hearings/records. Such an initiative would benefit from a formal plan for public and media education, developed by all stakeholders in the child protection system, including children and parents. Policy makers should carefully judge the balance between the real and potential costs and benefits of open records/hearings in child protection proceedings as they decide the future of this policy, and, to the extent that they can, initiate efforts to ensure that benefits will far outweigh costs.

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